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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA [and
STATE OF CALIFORNIA]

Plaintiff[s],

vs.

LOCKHEED MARTIN CORPORATION, CITY
OF BURBANK, CALIFORNIA, a Charter
City, WEBER AIRCRAFT, INC.,
[all settling defendants]

Defendants.

CIVIL ACTION NO. 91-
4527-
MRP (Tx)
SECOND CONSENT DECREE
FOR SAN FERNANDO VALLEY
SUPERFUND SITE, BURBANK
OPERABLE UNIT

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CONSENT DECREE

I. BACKGROUND

A. Summary of Site Background.

The following is a summary of the Site background as alleged by the United States which, for the purposes of this Consent Decree, Settling Defendants neither admit nor deny:

1. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), and the State of California, Department of Toxic Substances Control ("State") have filed concurrently with this Consent Decree complaints pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9606 and 9607 ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA").

2. The United States in its first amended and [supplemental] complaint, and the State in its complaint seek, inter alia: (1) reimbursement of costs of response incurred by EPA, ~~and the Department of Justice, and the State~~ for response actions at the Burbank Operable Unit Site ("Site") of the San Fernando Valley Superfund sites, with accrued interest; and (2) performance of response work by the Defendants at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").

3. This is the second complaint the United States has filed in this action. Pursuant to the first complaint, a consent

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1 decree ("First Consent Decree") was entered by this Court on
2 March 25, 1992. A copy of the First Consent Decree is included
3 as Exhibit 1 to this Consent Decree. Under Section XXIII
4 (Continuing Jurisdiction) of the First Consent Decree, this Court
5 retained jurisdiction over both the subject matter and of the
6 parties to the original action for the duration of the First
7 Consent Decree and for the purpose of issuing such further orders
8 or directions as may be necessary or appropriate to construe,
9 implement, modify, enforce, terminate or reinstate the terms of
10 the First Consent Decree or for any further relief as the
11 interest of justice may require.

12 4. The First Consent Decree provided for the
13 defendants to the first complaint, Lockheed Corporation (now
14 Lockheed Martin Corporation, hereinafter "Lockheed Martin"), the
15 City of Burbank, and Weber Aircraft, Inc. ("Weber"), to fund
16 and/or to perform certain response actions at the Site and for
17 Lockheed Martin and Weber to pay certain costs of response
18 incurred by EPA and the Department of Justice with respect to the
19 Site. This consent decree ("Second Consent Decree" or "this
20 Consent Decree") provides for the defendants that have entered
21 into this Consent Decree (collectively, "Settling Defendants") to
22 fund and/or to perform the remainder of the response actions and
23 to pay part of EPA's, the Department of Justice's, and the
24 State's remaining costs of response for the Site. In general,
25 the Second Consent Decree provides for the continued operation
26 and maintenance of 1) the facilities constructed under the First

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1 Consent Decree, and 2) the facilities constructed under EPA
2 Unilateral Administrative Order No. 92-12 ("UAO 92-12") ~~by the~~
3 ~~parties to UAO 92-12 ("UAO Parties")~~, during the final eighteen
4 years of the interim remedy operating period. The Second Consent
5 Decree further provides for: a) the performance of the UAO
6 Remedial Action Work by the UAO Parties (who are all Settling
7 Defendants), pursuant to UAO 92-12, to the extent that work has
8 not been completed at the time the Second Consent Decree is
9 entered; and (b) the possible dismantling or decommissioning of
10 these facilities upon completion of the interim remedy.

11 5. Tests conducted on San Fernando Valley groundwater
12 in the early 1980's revealed significant concentrations of
13 volatile organic compounds ("VOCS") in San Fernando Valley Basin
14 ("Basin") groundwater. The primary VOCS found in the Basin
15 groundwater were trichlorethylene ("TCE") and perchloroethylene
16 ("PCE"), which were widely used solvents in machinery degreasing,
17 metal plating and dry cleaning. TCE and PCE have been found in
18 the Burbank Operable Unit Site at levels that exceed the Maximum
19 Contaminant Levels ("MCLs") for these hazardous substances.
20 MCLs are safe drinking water standards established under the Safe
21 Drinking Water Act of 1974, as amended, 42 U.S.C. § 300f et seq.
22 The Federal MCL for TCE and PCE is 5 parts per billion ("ppb").

23 B. Based on investigations of Basin groundwater, and
24 pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, in June 1986
25 EPA placed four well field sites in the San Fernando Valley on
26 the National Priorities List, set forth at 40 C.F.R. Part 300,

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1 Appendix B, by publication in the Federal Register (see 51 Fed.
2 Reg. 21054): 1) the North Hollywood Superfund site (Area 1), 2)
3 the Crystal Springs Superfund site (Area 2), 3) the Pollock
4 Superfund site (Area 3), and 4) the Verdugo Superfund site (Area
5 4).

6 C. EPA is conducting a Basin-wide Remedial Investigation
7 and Feasibility Study ("RI/FS") for the San Fernando Valley
8 Superfund sites, which EPA manages as one large Superfund site.
9 EPA has also entered into a multi-site cooperative agreement with
10 the California Department of Health Services ("DHS") which funds
11 DHS participation in remedial activities at many California
12 Superfund sites, including the San Fernando Valley sites. In
13 September of 1989, EPA entered into a cooperative agreement with
14 the California State Water Resources Control Board ("SWRCB").
15 Under that cooperative agreement, SWRCB funds the Los Angeles
16 Regional Water Quality Control Board's ("RWQCB") ongoing source
17 investigation and source control work in the Basin.

18 D. EPA has designated four operable units within the San
19 Fernando Valley Superfund sites known as the North Hollywood,
20 Burbank, Glendale North and Glendale South operable units. This
21 Site, the Burbank Operable Unit Site, is one of those four
22 operable units.

23 E. EPA has issued interim Records of Decision ("RODs")
24 prescribing interim remedies for each of these operable units.

25 F. The Site is part of the North Hollywood Area (Area 1)
26 Superfund site, and is the second operable unit in the Basin for

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1 | which EPA has issued an interim ROD. The Site includes the
2 | northeast corner of the North Hollywood Area Superfund site, as
3 | well as the areas to which the plume of TCE and PCE has spread
4 | beyond the original boundaries drawn at the time the North
5 | Hollywood Area Superfund site was listed on the NPL.

6 | G. EPA completed an Operable Unit Feasibility Study
7 | ("OU/FS") Report on the Site in October 1988.

8 | H. The comment period on the OU/FS Report and the Proposed
9 | Plan for the Site opened on October 19, 1988 and closed December
10 | 2, 1988. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617,
11 | EPA published notice of the completion of the OU/FS and of the
12 | Proposed Plan in two major local newspapers of general
13 | circulation, the Los Angeles Times and the Burbank Leader. EPA
14 | provided an opportunity for written and oral comments from the
15 | public on the Proposed Plan for remedial action. A copy of the
16 | transcript of the public meeting is available to the public as
17 | part of the Administrative Record upon which the Regional
18 | Administrator based the selection of the interim response actions
19 | selected for the Site.

20 | I. EPA issued an interim ROD for the Site on June 30, 1989,
21 | which the State had a reasonable opportunity to review. A copy
22 | of the ROD is appended as Appendix A to the First Consent Decree.
23 | The ROD included a responsiveness summary responding to the
24 | public comments received at the public meeting. Notice of the
25 | Final Plan was published in accordance with Section 117(b) of
26 | CERCLA. The remedy described in the ROD was modified by EPA's

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1 Explanation of Significant Differences issued by EPA on November
2 21, 1990 ("ESD 1"). A copy of ESD 1 is included as Appendix B to
3 the First Consent Decree. Furthermore, EPA included in the First
4 Consent Decree certain modifications to the interim remedy, as
5 provided in Subpart F of Section VII of that decree (Work To Be
6 Performed). Those modifications did not represent a fundamental
7 change to the remedy selected in the ROD and Explanation of
8 Significant Differences. The remedy described in the ROD was
9 further modified by EPA's second Explanation of Differences
10 issued by EPA on _____, 1996 ("ESD 2"). A copy of EPA's
11 ESD 2 is included as Appendix 5 to this Consent Decree.

12 J. In 1989, pursuant to Section 122(e) of CERCLA, 42 U.S.C.
13 § 9622(e), EPA issued Special Notice for Remedial Design and
14 Remedial Action to potentially responsible parties for the Site.
15 By its 1989 Special Notice, EPA sought the construction,
16 operation and maintenance of the interim remedy for the Site. As
17 more fully described in the ROD, that remedy consists of a
18 groundwater extraction and treatment facility, a blending
19 facility, and systems for delivering the treated groundwater to
20 the public water supply. The treated, blended groundwater
21 delivered to the public water supply shall meet all drinking
22 water standards established by the United States and the State of
23 California. The interim remedy is required to operate for twenty
24 (20) years.

25 K. In the First Consent Decree, Lockheed Martin, Weber and
26 the City of Burbank agreed to construct and/or to fund the

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1 construction of the treatment plant for the Burbank Operable
2 Unit, and to operate and maintain and/or to fund the operation
3 and maintenance of the treatment plant for two years after
4 construction is complete. Lockheed Martin and Weber also agreed
5 to pay part of EPA's and the Department of Justice's costs for
6 the Site.

7 L. In March 1992, EPA issued UAO 92-12 to six potentially
8 responsible parties who had received the 1989 Special Notice:
9 Aeroquip Corporation, Crane Company, Inc., Janco Corporation,
10 Sargent Industries, Incorporated, the Antonini Family Trust and
11 Ocean Technology, Incorporated. Copies of UAO 92-12 and the
12 April 28, 1992 Amendment to UAO 92-12 are included as Exhibit 2
13 to this Decree. UAO 92-12 ordered these parties to construct a
14 blending facility to receive and blend the treated groundwater
15 with another source of water to reduce nitrate levels and deliver
16 the water to the public water supply system.

17 M. In this action, EPA and the State seek reimbursement of
18 past and future response costs, including Basin-wide Response
19 Costs for the Site, which are not reimbursed pursuant to the
20 First Consent Decree. EPA also seeks the performance of the
21 Operation and Maintenance ("O&M") of the treatment and blending
22 facilities for the period not provided by the First Consent
23 Decree or UAO 92-12.

24 N. Based on the information presently available to EPA and
25 the State, EPA and the State believe that this work will be
26 properly and promptly conducted by the Settling Defendants if

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1 conducted in accordance with the requirements of this Consent
2 Decree and its appendices.

3 O. The State is not a party to the First Consent Decree.
4 In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42
5 U.S.C. § 9621(f)(1)(F), EPA notified the State on September 7,
6 1994 of negotiations with potentially responsible parties
7 regarding the implementation of the remainder of the remedial
8 action for the Site, and EPA has provided the State with an
9 opportunity to participate in such negotiations and be a party to
10 this Consent Decree.

11 P. The State has filed its complaint and is alleging that
12 the defendants are liable to the State under Section 107 of
13 CERCLA, 42 U.S.C. § 9607, and under Chapter 6.8, Section 25300 et
14 seq., of the California Health & Safety Code for the State's past
15 and future response costs at the Site.

16 Q. In accordance with Section 122(j)(1) of CERCLA, 42
17 U.S.C. § 9622(j)(1), EPA notified the United States Department of
18 the Interior on September 15, 1994 of negotiations with
19 potentially responsible parties regarding the release of
20 hazardous substances that may have resulted in injury to the
21 natural resources under Federal trusteeship and encouraged the
22 trustee(s) to participate in the negotiation of this Consent
23 Decree.

24 R. Settling Defendants deny any and all legal or equitable
25 liability under any Federal, State, or local statute, regulation
26 or ordinance, or the common law, for any response costs, damages

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1 or claims caused by or arising out of conditions at or arising
2 from the Burbank Well Field or the Site. By entering into this
3 Consent Decree, or by taking any action in accordance with it,
4 Settling Defendants do not admit any allegations contained herein
5 or in the complaints, nor do Settling Defendants admit liability
6 for any purpose or admit any issues of law or fact or any
7 responsibility for releases of hazardous substance into the
8 environment. Nothing in this Paragraph shall alter Settling
9 Defendants' agreement not to challenge the Court's jurisdiction
10 as set forth in Section II ("Jurisdiction"), or in any manner
11 whatsoever affect Settling Defendants' obligations or rights
12 under this Consent Decree, the First Decree or UAO 92-12.

13 S. The Parties recognize, and the Court by entering this
14 Consent Decree finds, that this Consent Decree has been
15 negotiated by the Parties in good faith and implementation of
16 this Consent Decree will expedite the cleanup of the Site and
17 will avoid prolonged and complicated litigation between the
18 Parties, and that this Consent Decree is fair, reasonable, and in
19 the public interest.

20 T. Solely for the purposes of Section 113(j) of CERCLA, 42
21 U.S.C. § 9613(j), the Remedial Action selected by the ROD and the
22 work to be performed by the Settling Defendants shall constitute
23 a response action taken or ordered by the President.

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1 NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

2 II. JURISDICTION

3 This Court has jurisdiction over the subject matter of this
4 action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§
5 9606, 9607, and 9613(b). This Court also has personal
6 jurisdiction over the Settling Defendants. Solely for the
7 purposes of this Consent Decree and the underlying complaints,
8 Settling Defendants waive all objections and defenses that they
9 may have to jurisdiction of the Court or to venue in this
10 District. Settling Defendants shall not challenge the terms of
11 this Consent Decree or this Court's jurisdiction to enter and
12 enforce this Consent Decree.

13 III. PARTIES BOUND

14 A. This Consent Decree applies to and is binding upon the
15 United States and the State and upon Settling Defendants and
16 their heirs, successors and assigns. Any change in ownership or
17 corporate status of a Settling Defendant including, but not
18 limited to, any transfer of assets or real or personal property
19 shall in no way alter such Settling Defendant's responsibilities
20 under this Consent Decree.

21 B. Settling Work Defendant (as defined below) shall
22 provide a copy of this Consent Decree to each contractor hired to
23 perform the O&M Activities (as defined below) required by this
24 Consent Decree and to each person representing Settling Work
25 Defendant with respect to the Site or the O&M Activities and
26 shall condition all contracts entered into hereunder upon

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1 performance of the O&M Activities in conformity with the terms of
2 this Consent Decree. Settling Work Defendant or its contractor
3 shall provide written notice of the Consent Decree to all
4 subcontractors hired to perform any portion of the O&M Activities
5 required by this Consent Decree. Settling Work Defendant shall
6 nonetheless be responsible for ensuring that its contractors and
7 subcontractors perform the O&M Activities contemplated herein in
8 accordance with this Consent Decree. With regard to the
9 activities undertaken pursuant to this Consent Decree, each
10 contractor and subcontractor shall be deemed to be in a
11 contractual relationship with Settling Work Defendant within the
12 meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

13 IV. DEFINITIONS

14 A. Unless otherwise expressly provided herein, terms used
15 in this Consent Decree which are defined in CERCLA or in
16 regulations promulgated under CERCLA shall have the meaning
17 assigned to them in CERCLA or in such regulations. Whenever
18 terms listed below are used in this Consent Decree or in the
19 appendices attached hereto and incorporated hereunder, the
20 following definitions shall apply:

21 "Basin-wide Response Costs" shall mean all costs, including,
22 but not limited to, direct and indirect costs and interest,
23 payroll costs, contractor costs, travel costs, laboratory costs,
24 attorneys' fees and just compensation, that the United States or
25 the State has incurred or paid or will incur and pay with regard
26 to basin-wide non-operable unit-specific response actions.

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1 "Blending Facility" pertains to the blending facility and
2 related pipeline designed and constructed by the UAO Parties
3 pursuant to UAO 92-12, beginning generally with the B-5
4 Connection and concluding with the Point of Interconnection, as
5 "B-5 Connection" and "Point of Interconnection" are defined in
6 the First Consent Decree.

7 "CERCLA" shall mean the Comprehensive Environmental
8 Response, Compensation, and Liability Act of 1980, as amended, 42
9 U.S.C. §§ 9601 et seq.

10 "City" or "City of Burbank" shall mean the City of Burbank,
11 California, as a charter city, and any of its divisions,
12 departments and other subdivisions. "City" or "City of Burbank"
13 shall not include any joint powers authority of which the City of
14 Burbank is a member.

15 "Consent Decree" or "Second Consent Decree" shall mean this
16 Consent Decree and all appendices attached hereto (listed in
17 Section XXX). In the event of conflict between this Consent
18 Decree and any appendix, this Consent Decree shall control.

19 "Date of Commencement" shall mean, in general, the date
20 specified by EPA that Settling Work Defendant will assume the O&M
21 responsibilities for the Burbank Operable Unit remedy, and
22 Lockheed Martin and the UAO Parties shall cease their respective
23 obligations to perform under the First Consent Decree or UAO 92-
24 12. The parties anticipate that this date will be two years
25 after the System Operation Date for phase two of the Remedial
26 Action Work as specified in the First Consent Decree unless

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delays, including without limitation delays which any party attributes to a force majeure event, cause that date to be extended. Within thirty (30) days of the System Operation Date for phase two of the Remedial Action Work as specified in the First Consent Decree, EPA will specify the tentative Date of Commencement and notify the Settling Work Defendant, Lockheed Martin and the UAO Parties of the tentative Date of Commencement. EPA may revise the tentative Date of Commencement at any time during phase two of the Remedial Action Work as specified in the First Consent decree, and shall notify the Settling Work Defendant, Lockheed Martin and the UAO Parties of any such revision. EPA's specified tentative Date of Commencement shall control all reporting and similar requirements which are required to occur in relation to the Date of Commencement. However, in no event shall the Date of Commencement specified by EPA extend the amount of time the interim remedy is required to operate under the ROD.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal or State holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal or State holiday, the period shall run until the close of business of the next working day.

"Department of Health Services," or "DHS" shall mean the California pollution control agency of that name and any

1 successor departments or agencies of the State of California with
2 authority to implement the Safe Drinking Water Act.

3 "Department of Toxic Substances Control" or "DTSC" shall
4 mean the California pollution control agency of that name and any
5 successor departments or agencies of the State of California.

6 "Design Defect" shall mean a failure of any system required
7 to be designed and constructed pursuant to the First Consent
8 Decree or UAO 92-12 to perform as originally designed, which
9 results from a failure by a design professional used by Lockheed
10 Martin or the UAO Parties to adequately design the system to
11 perform in the manner intended, and as described in the design
12 specifications contained in the Final Remedial Design Reports
13 prepared by Lockheed Martin pursuant to the First Consent Decree
14 or the UAO Parties pursuant to UAO 92-12.

15 "Downstream Facilities" pertains to the Blending Facility
16 constructed by the UAO Parties pursuant to UAO 92-12 and to
17 facilities constructed or repaired by the City of Burbank
18 pursuant to the First Consent Decree. Downstream Facilities also
19 pertains to additional facilities which may be constructed
20 pursuant to this Consent Decree downstream of the Upstream
21 Facilities, as defined in this Section. "Downstream" pertains to
22 the flow of extracted, treated groundwater beginning generally
23 with the Point of Delivery as "Point of Delivery" is defined by
24 the First Consent Decree.

25 "EPA" shall mean the United States Environmental Protection
26 Agency and any successor departments or agencies of the United

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1 States.

2 "Explanation of Significant Differences 1" or "ESD1" shall
3 mean the document dated November 21, 1990, Appendix B to the
4 First Consent Decree. "Explanation of Significant Differences 2"
5 or "ESD2" shall mean the Explanation of Significant Differences
6 dated _____, Appendix 5 to this Consent Decree.

7 "First Consent Decree" shall mean the consent decree entered
8 by this Court on March 25, 1992, resolving the underlying
9 complaint filed by the United States against defendants Lockheed
10 Martin, the City of Burbank and Weber, appended to this Consent
11 Decree as Exhibit 1, ~~and any amendments or modifications to that~~
12 ~~consent decree.~~

13 "Future Basin-wide Response Costs" shall mean all Basin-wide
14 Response Costs incurred or paid by EPA after September 30, 1995
15 or incurred or paid by the State after March 31, 1996.

16 "Future Site-Specific Response Costs" shall mean all types
17 of costs described in the definition of Basin-wide Response
18 Costs, (e.g., payroll costs) above, incurred or paid by the
19 United States after the Certification of Completion issues with
20 respect to the First Consent Decree, or by the State after March
21 31, 1996, with regard to Burbank Operable Unit-specific response
22 actions.

23 "Interest" shall mean interest at the rate specified for
24 interest on investments of the Hazardous substance Superfund
25 established under Subchapter A of Chapter 98 of Title 26 of the
26 U.S. Code, compounded on October 1 of each year, in accordance

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1 with 42 U.S.C. § 9607(a).

2 "Los Angeles Department of Water and Power" or "LADWP" shall
3 mean the department of the City of Los Angeles, and any successor
4 agencies or departments, with which EPA has entered into
5 cooperative agreements for the performance of the Basin-wide
6 Remedial Investigation and Feasibility Study for the San Fernando
7 Valley Superfund Sites.

8 "National Contingency Plan" or "NCP" shall mean the National
9 Oil and Hazardous Substances Pollution Contingency Plan
10 promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605,
11 codified at 40 C.F.R. Part 300, including, but not limited to,
12 any amendments thereto.

13 "Operation and Maintenance" or "O&M" or "O&M Activities"
14 shall mean the activities required to operate, maintain and
15 monitor the effectiveness of the Remedial Action as required
16 under the Operation and Maintenance Plan(s) approved or developed
17 by EPA in conformance with this Consent Decree, UAO 92-12, the
18 Second Stage O&M Work Plan to be developed under this Consent
19 Decree, and the Second Stage Statement of Work attached as
20 Appendix 4 to this Consent Decree.

21 "O&M Trust Account" pertains to the trust account which
22 Lockheed Martin shall be required to establish pursuant to
23 Section XIV (Funding of Response Activities), Paragraph D of this
24 Consent Decree.

25 "Operations and Maintenance Contractor" or "O&M Contractor"
26 shall mean the principal contractor retained by the Settling Work

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Defendant to perform the O&M Activities. The O&M Contractor shall, inter alia: 1) provide the staff to operate and maintain the Plant Facilities; 2) conduct the day-to-day physical tasks of operating ~~the~~ Plant Facilities; 3) perform routine water quality monitoring; 4) physically perform the routine and non-routine maintenance of the Plant Facilities; and 5) maintain the daily operational records of the Plant Facilities.

"Owner Settling Defendants" shall mean the Settling Defendants listed in Appendix 2.

"Paragraph" shall mean a portion of this Consent Decree or the First Consent Decree identified by an arabic numeral or an upper case letter.

"Parties" shall mean the United States, the State of California and the Settling Defendants.

"Past Basin-wide Response Costs" shall mean all Basin-wide Response Costs incurred and paid by EPA prior to September 30, 1995, or incurred and paid by the State prior to March 31, 1996.

"Past Site-Specific Response Costs" shall mean all costs, including, but not limited to, all types of costs described in the definition of Basin-wide Response Costs, e.g. payroll costs, above, that the United States incurred and paid with regard to the Burbank Operable Unit Site prior to September 30, 1995 or that the State incurred and paid prior to March 31, 1996.

"Performance Standards" shall mean those operation and maintenance standards, standards of control, and other substantive requirements, criteria or limitations set forth in

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1 the ROD, the First Consent Decree or this Consent Decree, the
2 Second Stage Statement of Work, Appendix 4 to this Consent
3 Decree, and any work plan established pursuant to the First
4 Consent Decree or this Consent Decree. In the event of any
5 conflict between the First Consent Decree and this Consent
6 Decree, or between any work plan established pursuant to the
7 First Consent Decree or this Consent Decree as to the Performance
8 Standards that apply to the O&M Activities, this Consent Decree
9 or the work plan established pursuant to this Consent Decree
10 shall control.

11 "Plaintiffs" shall mean the United States and the State of
12 California DTSC.

13 "Plant Facilities" shall mean all parts of the
14 infrastructure necessary to carry out the Burbank Operable Unit
15 interim remedy, as constructed pursuant to the First Consent
16 Decree and UAO 92-12, including without limitation the extraction
17 wellfield, treatment plant, disinfection facility, booster
18 station, blending water interconnection and pipeline, connecting
19 pipelines for extraction wells to treatment plant, and Blending
20 Facility.

21 "Regional Water Quality Control Board" or "RWQCB" shall mean
22 the California pollution control agency and any successor
23 agencies or departments of the State, which performs ongoing
24 source investigation and source control work in the San Fernando
25 Valley Basin pursuant to a cooperative agreement between EPA and
26 the State Water Resources Control Board.

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1 "RCRA" shall mean the Solid Waste Disposal Act, as amended,
2 42 U.S.C. §§ 6901 et seq. (also known as the Resource
3 Conservation and Recovery Act).

4 "Record of Decision" or "ROD" shall mean the EPA Record of
5 Decision relating to the Burbank Operable Unit, signed on June
6 30, 1989, by the Regional Administrator, EPA Region IX, and all
7 attachments thereto, as modified by EPA's ESD1 and ESD2.

8 "Released Parties" shall mean Settling Defendants and their
9 officers, directors, employees and agents, and where the Settling
10 Defendant is a trustee, its successor trustees appointed to carry
11 out the purposes of said trust; and where the Settling Defendant
12 is a corporate entity, its corporate successors to potential
13 liability for the Site. "Released Parties" shall also mean the
14 following named entities associated with Lockheed Martin, and the
15 named entities described in Appendix 1 as Released Parties
16 related to one or more of the other Settling Defendants.

17 Released Parties Associated with Lockheed Martin:

18 [to be added]

19 "Remedial Action" or "Remedial Action Work" shall mean those
20 activities, except for Operation and Maintenance, to be
21 undertaken or which have been undertaken by any of the Settling
22 Defendants to implement the final plans and specifications
23 submitted by certain of the Settling Defendants pursuant to the
24 Remedial Design Work Plan under the First Consent Decree or the
25 UAO Remedial Design Work Plan under UAO 92-12 and approved by
26 EPA.

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1 "Remedial Action Work Plan" shall mean the document
2 submitted by certain of the Settling Defendants pursuant to the
3 Statement of Work, Appendix D to the First Consent Decree.

4 "Remedial Design" shall mean those activities which were
5 undertaken by certain of the Settling Defendants pursuant to the
6 Statement of Work ("SOW"), Appendix D to the First Consent
7 Decree, to develop the final plans and specifications for the
8 Remedial Action pursuant to the Remedial Design Statement of
9 Work, or pursuant to the Work Schedule, Appendix A to UAO 92-12,
10 to develop the final plans and specifications for the blending
11 facility.

12 "Remedial Design Statement of Work" or "SOW" shall mean the
13 document appended as Appendix D to the First Consent Decree.

14 "Remedial Design Work Plan" shall mean the work plan
15 prepared by certain of the Settling Defendants pursuant to the
16 SOW, Appendix D to the First Consent Decree, to describe the
17 final plans and specifications for the Remedial Action.

18 "Second Consent Decree Trust Account" pertains to the trust
19 account which Lockheed Martin shall be required to establish
20 pursuant to Section XIV (Funding of Response Activities),
21 Paragraph C of this Consent Decree.

22 "Second Stage Operation and Maintenance Work Plan" or
23 "Second Stage O&M Work Plan" shall mean the document prepared
24 pursuant to Section VI of this Consent Decree (Performance of the
25 Work), which shall describe certain Settling Defendants'
26 obligations to operate and maintain, and to dismantle,

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decommission or otherwise dispose of the Plant Facilities.

"Second Stage Statement of Work" or "Second Stage SOW" shall mean the statement of work for implementation of the O&M Activities attached as Appendix 4 to this Consent Decree.

"Section" shall mean a portion of this Consent Decree or the First Consent Decree identified by a roman numeral.

"Settling Cash Defendants" shall mean those Settling Defendants who have funded, in whole or in part, the Second Consent Decree Trust Account described in Section XIV (Funding of Response Activities), via a settlement with Lockheed Martin in the action Lockheed Martin Corporation v. Crane Company et al., United States District Court, Central District of California, Case No. CV 94 2717 MRP (Tx). This term includes each of the UAO Parties.

"Settling Defendants" shall mean Lockheed Martin, Settling Cash Defendants and Settling Work Defendant.

"Settling Work Defendant" shall mean the Settling Defendant that is obligated to perform the Operation and Maintenance Activities pursuant to this Consent Decree, except as to Design Defects as provided in Section VI (Performance of the Work) and Section XIV (Funding Obligations), Paragraph M (Funding Obligation for Design Defects). The City of Burbank is the sole Settling Work Defendant pursuant to this Consent Decree.

"Site" shall mean the areal extent of hazardous substance groundwater contamination that is presently located in the vicinity of the Burbank Well Field and includes any areas to

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1 | which and from which such hazardous substance groundwater
2 | contamination migrates.

3 | "State" shall mean the State of California, the California
4 | Environmental Protection Agency and the Department of Toxic
5 | Substances Control and any successor agencies or departments of
6 | the State.

7 | "State Water Resources Control Board" or "SWRCB" shall mean
8 | the California pollution control agency and any successor
9 | agencies or departments of the State, with which EPA has entered
10 | into a series of cooperative agreements for the ongoing source
11 | identification and source control in the Basin conducted by the
12 | RWQCB.

13 | "Statement of Work" or "SOW" shall mean the statement of
14 | work for implementation of the Remedial Action, and the first two
15 | years of Operation and Maintenance at the Site, as set forth in
16 | Appendix D to the First Consent Decree and any modifications made
17 | pursuant to the First Consent Decree.

18 | "Supervising Contractor" shall mean the principal contractor
19 | retained or otherwise selected by the Settling Work Defendant,
20 | and approved by EPA, to 1) develop the Second Stage O&M Work
21 | Plan; 2) prepare the Project Time Line and Staffing Plan required
22 | by Section VI, Paragraph C.7 of this Consent Decree; 3) prepare
23 | bid documents to select the O&M Contractor; ~~and~~ 4) conduct
24 | periodic oversight, including engineering oversight of the O&M
25 | Contractor, and submit reports on such periodic oversight to EPA.

26 | "UAO 92-12" shall mean the unilateral administrative order

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1 executed by EPA on March 26, 1992 as amended by a letter of April
2 28, 1992, from Jeffrey Zelikson to the UAO Parties, appended as
3 Exhibit 2 to this Consent Decree.

4 "UAO Parties" shall mean the Respondents as defined in
5 Section VII.V of UAO 92-12: Aeroquip Corporation, Crane Company,
6 Inc., Janco Corporation, Sargent Industries, Incorporated,
7 Antonini Family Trust, and Ocean Technology, Incorporated.

8 "UAO Remedial Action Work Plan" shall mean the document
9 submitted by certain of the Settling Defendants pursuant to
10 Attachment A to UAO 92-12.

11 "UAO Remedial Design" shall mean those activities which were
12 undertaken by the recipients of UAO 92-12 to develop the final
13 plans and specifications for the blending facility portion of the
14 Remedial Action pursuant to Attachment A to UAO 92-12.

15 "UAO Remedial Design Statement of Work" or "UAO SOW" shall
16 mean the remedial design document prepared by the recipients of
17 UAO 92-12 and submitted pursuant to Attachment A to UAO 92-12.

18 "UAO Remedial Design Work" shall mean the activities to be
19 undertaken by the UAO Parties as defined in Section VII.T of UAO
20 92-12.

21 "UAO Remedial Design Work Plan" shall mean the work plan
22 prepared by the ~~recipients of the UAO Parties~~ pursuant to the
23 Work Schedule, Appendix A to UAO 92-12, to describe the final
24 plans and specifications for the transmission line and blending
25 facility.

26 "Upstream Facilities" pertains to all facilities designed

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1 and constructed by Lockheed Martin pursuant to the First Consent
2 Decree and modifications thereto, and to additional facilities
3 which may be constructed pursuant to this Consent Decree upstream
4 of the Blending Facility as originally constructed by the UAO
5 Parties pursuant to UAO 92-12. "Upstream" pertains to the flow
6 of extracted, treated groundwater beginning with its extraction
7 from the aquifer and generally concluding with the Point of
8 Delivery as "Point of Delivery" is defined in the First Consent
9 Decree.

10 "United States" shall mean the United States of America.

11 "Waste Material" shall mean (1) any "hazardous substance"
12 under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any
13 pollutant or contaminant under Section 101(33), 42 U.S.C.
14 § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA,
15 42 U.S.C. § 6903(27); and (4) any "hazardous material" under
16 California Health & Safety Code Section 25100 et seq.

17 "Working Day" shall mean a day other than a Saturday, Sunday
18 or Federal or State holiday.

19 V. GENERAL PROVISIONS

20 A. Purpose.

21 The purposes of this Consent Decree are to protect public
22 health or welfare or the environment at the Site by the
23 implementation of response actions at the Site, to reimburse part
24 of the Plaintiffs' response costs related to the Site, and to
25 resolve amicably the claims asserted against Settling Defendants
26 in the underlying complaints filed in this matter.

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B. Commitments by Settling Defendants.

1. Lockheed Martin, the City of Burbank, the UAO Parties and the ~~other~~ Settling Cash Defendants shall finance and/or perform the O&M Activities and other obligations, if any, described in Sections VI, (Performance of the Work), VII (Additional Response Actions), ~~VIII (EPA Periodic Review)~~ and XIV ~~(Funding of Response Activities)~~ herein in accordance with this Consent Decree and all plans, standards, specifications, and schedules set forth in or developed or approved by EPA pursuant to this Consent Decree. Lockheed Martin shall also reimburse the United States and the State for Past and Future Site-specific and ~~Past~~ Basin-wide Response Costs as provided in Section XVII of this Consent Decree ~~(Reimbursement of Response Costs)~~.

2. The obligations of Lockheed Martin, the City of Burbank, the UAO Parties and the other Settling Cash Defendants to finance and/or to perform the O&M Activities, ~~and other obligations, if any,~~ and to pay amounts owed to the United States and the State under this Consent Decree are several, except with respect to the UAO Parties' obligation to fund response actions pursuant to Section XIV (Funding of Response Activities), Paragraph M, which ~~are~~ ~~is~~ joint and several.

C. Compliance With Applicable Law.

All response activities undertaken by any Settling Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable Federal and State laws and regulations. Settling Defendants who perform

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1 response activities also shall comply with all applicable or
2 relevant and appropriate requirements of all Federal and State
3 environmental laws as set forth in the ROD, the Explanations of
4 Significant Differences, the SOW, the First Consent Decree, this
5 Consent Decree, and any deliverables developed or approved by EPA
6 under the First Consent Decree, UAO 92-12 or this Consent Decree.
7 The activities conducted in accordance with this Consent Decree
8 shall be considered to be consistent with the NCP.

9 D. Permits.

10 1. As provided in Section 121(e) of CERCLA, 42 U.S.C.
11 § 9621(e) and Section 300.5 of the NCP, no permit shall be
12 required for any portion of the O&M Activities conducted entirely
13 on-site. Where any portion of the O&M Activities requires a
14 Federal or State permit or approval, Settling Work Defendant
15 shall submit timely and complete applications and take all other
16 reasonable actions necessary to obtain all such permits or
17 approvals. Nothing in this Paragraph shall require the City of
18 Burbank to exercise condemnation, eminent domain, or similar
19 powers or authorities.

20 2. Settling Work Defendant may seek relief under the
21 provisions of Section XIX (Force Majeure) of this Consent Decree
22 for any delay in the performance of the O&M Activities resulting
23 from a failure to obtain, or a delay in obtaining, any permit
24 required for the O&M Activities.

25 3. This Consent Decree is not, and shall not be
26 construed to be, a permit issued pursuant to any Federal or State

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statute or regulation.

E. Notice of Obligations to Successors-in-Title.

1. The obligations of each Owner Settling Defendant with respect to the properties identified in Appendix 2 to this Consent Decree, and the provision of access under Section X (Access) shall be binding upon such Owner Settling Defendant and any and all persons who subsequently acquire any fee ownership interest in such property or portion thereof within the Site owned by the Owner Settling Defendant (hereinafter "Successors-in-Title").

2. In the event of any ~~such conveyance of such fee ownership or portion thereof~~, each such Owner Settling Defendant's obligations under this Consent Decree, including its obligations to provide or secure access pursuant to Section X, shall continue to be met by such Owner Settling Defendant. In no event shall the conveyance of an interest in property that includes, or is a portion of, the Site release or otherwise affect the liability of such Owner Settling Defendant to comply with the Consent Decree.

3. Any Owner Settling Defendant and any Successor-in-Title shall, at least thirty (30) days prior to the conveyance of any such interest, give written notice of this Consent Decree to the grantee. No later than thirty (30) days after the conveyance of any such interest, such Owner Settling Defendant or Successor-in-Title shall give written notice to EPA and the State of the conveyance, including the name and address of the grantee, and

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1 the date on which notice of the Consent Decree was given to the
2 grantee, and evidence such action by providing a copy of its
3 notice to the grantee.

4 F. The obligation to provide notice pursuant to this
5 Section shall terminate upon issuance of the Certification of
6 Completion pursuant to Section XV (Certification of Completion)
7 of this Consent Decree.

8 G. In lieu of the provisions of Paragraph E of this
9 Section, the City shall, at least thirty (30) days prior to the
10 conveyance of any such interest in the real property it owns at
11 164 West Magnolia Boulevard in the City of Burbank, give written
12 notice of this Consent Decree to the grantee. No later than
13 thirty (30) days after such conveyance, the City shall give
14 written notice to EPA and the State of such conveyance, including
15 the name and address of the grantee, and the date on which notice
16 of the Consent Decree was given to the grantee, and evidence such
17 action by providing a copy of its notice to the grantee. In the
18 event of any such conveyance, the City's obligations under this
19 Consent Decree shall continue to be met by the City. In no event
20 shall the conveyance of an interest in the property release or
21 otherwise affect the liability of the City to comply with the
22 Consent Decree. Any Successor-in-Title to the real property at
23 164 West Magnolia boulevard shall be bound by the provisions of
24 Paragraph E.1 through E.3 of this Section.

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1 VI. PERFORMANCE OF THE WORK

2 A. Selection of Supervising Contractor.

3 1. All aspects of the O&M Activities to be performed
4 by Settling Work Defendant pursuant to Sections VI (Performance
5 of the Work), VII (Additional Response Actions), VIII (U.S. EPA
6 Periodic Review), and IX (Quality Assurance, Sampling and Data
7 Analysis) of this Consent Decree shall be under the direction and
8 supervision of the Supervising Contractor, the selection of which
9 shall be subject to disapproval by EPA after a reasonable
10 opportunity for review and comment by the State. Within one
11 hundred and eighty (180) days after the entry of this Consent
12 Decree, Settling Work Defendant shall notify EPA and the State in
13 writing of the name, title, and qualifications of any contractor
14 proposed to be the Supervising Contractor. Settling Work
15 Defendant may submit a list of contractors for pre-qualification
16 prior to engaging in any bidding process. Settling Work
17 Defendant may also propose to directly serve in the role of
18 Supervising Contractor, subject to EPA's review and approval.
19 EPA will issue a notice of approval or disapproval of the
20 Supervising Contractor. Upon its approval of the Supervising
21 Contractor, EPA will issue an authorization to proceed. If at
22 any time thereafter, Settling Work Defendant proposes to change a
23 Supervising Contractor, Settling Work Defendant shall give such
24 notice to EPA and the State and must obtain an authorization to
25 proceed from EPA, after a reasonable opportunity for review and
26 comment by the State, before the new Supervising Contractor

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1 performs, directs, supervises or implements any O&M Activities
2 under this Consent Decree. In addition, if the Supervising
3 Contractor proposes to subcontract any portion of the
4 supervision, direction or implementation of the O&M Activities
5 under this Consent Decree, Settling Work Defendant shall give
6 such notice to EPA and the State and must obtain an authorization
7 to proceed from EPA, after a reasonable opportunity for review
8 and comment by the State, before the subcontractor supervises,
9 directs, or implements any O&M Activities under this Consent
10 Decree.

11 2. If EPA disapproves a proposed Supervising
12 Contractor, EPA will notify Settling Work Defendant in writing.
13 Settling Work Defendant shall submit to EPA and the State a list
14 of contractors, including the qualifications of each contractor,
15 that would be acceptable to it within thirty (30) days of receipt
16 of EPA's disapproval of the contractor previously proposed. EPA
17 will provide written notice of the names of any contractor(s)
18 that it disapproves and an authorization to proceed with respect
19 to any of the other contractors. Settling Work Defendant may
20 select any contractor from that list that is not disapproved and
21 shall notify EPA and the State of the name of the contractor
22 selected within twenty-one (21) days of EPA's authorization to
23 proceed.

24 3. If EPA fails to provide written notice of its
25 approval, authorization to proceed or disapproval as provided in
26 this Paragraph and this failure prevents Settling Work Defendant

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1 from meeting one or more deadlines pursuant to this Consent
2 Decree, Settling Work Defendant may seek relief under the
3 provisions of Section XIX (Force Majeure) hereof.

4 B. Selection of O&M Contractor.

5 1. The day-to-day conduct of the O&M Activities will
6 be performed by the O&M Contractor as defined in Section IV
7 (Definitions) of this Consent Decree. The selection of the O&M
8 Contractor shall be subject to disapproval by EPA after a
9 reasonable opportunity for review and comment by the State.
10 Within one hundred and eighty (180) days after the System
11 Operation Date for Phase Two of the Work as specified in the
12 First Consent Decree, Settling Work Defendant shall notify EPA
13 and the State in writing of the name, title and qualifications of
14 any contractor proposed to be the O&M Contractor. EPA will issue
15 a notice of approval or disapproval. Upon issuance of a notice
16 of approval, EPA shall issue an authorization to proceed. If at
17 any time thereafter, Settling Work Defendant proposes to change
18 the O&M Contractor, Settling Work Defendant shall give such
19 notice to EPA and the State and must obtain an authorization to
20 proceed from EPA, after a reasonable opportunity for review and
21 comment by the State, before the new O&M Contractor performs,
22 directs, supervises or implements any O&M Activities under this
23 Consent Decree. In addition, if the O&M Contractor proposes to
24 subcontract any portion of O&M Activities under this Consent
25 Decree, Settling Work Defendant shall give such notice to EPA and
26 the State and must obtain an authorization to proceed from EPA,

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1 after a reasonable opportunity for review and comment by the
2 State, before the subcontractor supervises, directs, or
3 implements any O&M Activities under this Consent Decree.

4 2. EPA's approval or disapproval of Settling Work
5 Defendant's selection of an O&M Contractor shall be governed by
6 the procedures set forth in Section VI (Performance of the Work),
7 Paragraphs A.2 and A.3 of this Consent Decree.

8 C. Completion of the Response Action.

9 1. Under Section VII of the First Consent Decree,
10 Lockheed Martin, Weber and the City of Burbank submitted to EPA,
11 inter alia, a work plan for the Remedial Design ("Remedial Design
12 Work Plan"), a work plan for the Remedial Action at the Site
13 ("Remedial Action Work Plan") and a plan for the first two years
14 of the Operation & Maintenance ("O&M Plan") of the interim
15 remedy. The Remedial Design, Remedial Action and O&M Work Plans
16 provided for design and implementation of part of the remedy set
17 forth in the ROD in accordance with the SOW and, upon approval by
18 EPA, were incorporated into and became enforceable under the
19 First Consent Decree. Under Section VII, Paragraph H.1 of the
20 First Consent Decree, the City of Burbank agreed to accept the
21 treated, blended groundwater for distribution to the public water
22 supply.

23 2. Lockheed Martin, Weber and the City of Burbank are
24 performing their obligations under the First Consent Decree.
25 Unless otherwise stated in this Consent Decree, these parties'
26 obligations under the First Consent Decree are not altered in any

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1 manner by this Consent Decree.

2 3. Under Section X of UAO 92-12, the UAO Parties were
3 required to submit, inter alia, a Remedial Design Work Plan and
4 Remedial Action Work Plan for the design, construction and
5 operation of the ~~blending facility~~ component of the ~~Burbank~~
6 ~~Operable Unit~~ interim remedy.

7 4. The UAO Parties are performing their obligations
8 under UAO 92-12. Unless otherwise stated in this Consent Decree,
9 these parties' obligations under UAO 92-12 are not altered in any
10 manner by this Consent Decree. The UAO Parties agree to perform
11 and complete their obligations under UAO 92-12.

12 5. Settling Work Defendant shall begin conducting the
13 Operation and Maintenance of the Plant Facilities, beginning on
14 the Date of Commencement and concluding upon EPA's issuance of a
15 Certification of Completion in accordance with Section XV
16 (Certification of Completion) of this Consent Decree.

17 Specifically, Settling Work Defendant shall operate and maintain
18 the Plant Facilities and monitor the effectiveness of such
19 facilities, for the duration of the time required by the ROD.

20 6. Lockheed Martin shall perform all work necessary to
21 dismantle and decommission the facilities constructed under the
22 First Consent Decree and UAO 92-12 unless EPA determines that
23 dismantling and/or decommissioning is not required.

24 7. As provided in Section XIV (Funding Obligations),
25 Paragraph M, Lockheed Martin shall fund the O&M Activities for
26 the Upstream Facilities and any response activities required

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1 because of a Design Defect in the Upstream Facilities. As is
2 also provided in Section XIV (Funding Obligations), Paragraph C,
3 the Settling Cash Defendants shall fund the Second Consent Decree
4 Trust Account according to their respective shares as set forth
5 in Appendix 6 to this Consent Decree, under seal, and the UAO
6 Parties also shall fund any response activities required because
7 of a Design Defect in any of the facilities constructed under UAO
8 92-12. The City of Burbank shall fund the operation and
9 maintenance of the Downstream Facilities except insofar as the
10 UAO Parties may be required to fund such activities because of a
11 Design Defect.

12 8. Within one year after this Consent Decree is
13 entered by the Court, Settling Work Defendant shall submit to
14 EPA:

15 ~~a. An O&M Second Stage Work Plan describing in~~
16 ~~detail the tasks to be performed to operate and maintain the~~
17 ~~Plant Facilities.~~

18 b. A Staffing Plan indicating lines of
19 responsibility and communication for day-to-day operations, and
20 designating the person or persons responsible for oversight of
21 the O&M ~~a~~Activities on behalf of Settling Work Defendant. Such
22 person or persons may be a member or members of Settling Work
23 Defendant's staff or a member of Settling Work Defendant's
24 Supervising or O&M Contractors. Settling Work Defendant shall
25 also designate a single contact for communications with EPA for
26 the O&M Activities from the date of entry of this Consent Decree

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1 through completion of the Remedial Action.

2 c. A Time Line and Schedule describing the timing
3 of the tasks of the O&M Activities, including any transitions to
4 take place between the first two years of O&M after Phase II of
5 the remedy is operational and the Date of Commencement.

6 9. Within two (2) years after this Consent Decree is
7 entered by the Court, the Settling Work Defendant shall submit to
8 EPA an O&M Second Stage Work Plan describing in detail the tasks
9 to be performed to operate and maintain the Plant Facilities.

10 D. Settling Defendants acknowledge and agree that nothing
11 in the First Consent Decree, this Consent Decree, the O&M Second
12 Stage Work Plan or in any plan approved pursuant to the First
13 Consent Decree or this Consent Decree constitutes a warranty or
14 representation of any kind by Plaintiffs that compliance with the
15 work requirements set forth in the O&M Second Stage Work Plan and
16 completion of the O&M Activities will achieve the Performance
17 Standards. Settling Work Defendant's compliance with the
18 requirements of Section VI (Performance of the Work) shall not
19 foreclose Plaintiffs from seeking achievement of all requirements
20 of the ROD including, but not limited to, the applicable
21 Performance Standards.

22 E. Settling Work Defendant shall, prior to any off-Site
23 shipment of Waste Material from the Site to an out-of-state waste
24 management facility, provide written notification to the
25 appropriate State environmental official in the receiving
26 facility's State and to the EPA Project Coordinator of such

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shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

1. The Settling Work Defendant shall include in the written notification the following information, where available:

(1) the name and location of the facility to which the Waste Material(s) are to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. The Settling Work Defendant shall notify the State in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

2. The Settling Work Defendant shall provide the information required by this Section, Paragraph E.1 as soon as practicable and before the Waste Material is actually shipped.

F. Miscellaneous Standards of Control.

1. Settling Work Defendant may discharge extracted water to any offsite conveyance(s) leading to any Publicly Owned Treatment Works ("POTW") or to any offsite conveyance(s) leading to any water(s) of the United States for a period of up to five (not necessarily consecutive) days during any month, if the water is not accepted by the City and cannot be vended, provided that the following requirements are met for such discharge:

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1 a. All substantive and procedural requirements
2 applicable to such discharge at the time of such discharge shall
3 be met, including any limits on the quantity of water to be
4 discharged;

5 b. The total combined amount of any discharge(s)
6 of extracted water to any offsite conveyance(s) leading to any
7 POTW(s) at any time shall not exceed 6,000 gpm; and

8 c. The total combined amount of extracted water
9 discharged to any offsite conveyance(s) leading to any POTW(s)
10 and to any offsite conveyance(s) leading to any water(s) of the
11 United States at any time shall not exceed 9,000 gpm.

12 Nothing in this Paragraph shall excuse Settling Work Defendant
13 from stipulated penalties for failure to comply with any other
14 requirements of this Decree.

15 2. Settling Work Defendant may discharge development
16 and purge water from wells to any offsite conveyance(s) leading
17 to a Publicly Owned Treatment Works ("POTW") or to any offsite
18 conveyance(s) leading to any water(s) of the United States,
19 provided that any such discharge is in compliance with all
20 substantive and procedural requirements applicable to such
21 discharge at the time of such discharge. Water discharged
22 pursuant to this Paragraph F.2 shall not be included in the
23 limits on the amount of water allowed to be discharged pursuant
24 to Paragraph F.1. of this Section.

25 3. Any water containing hazardous constituents and
26 stored onsite for more than ninety days shall be handled as a
27 hazardous waste onsite. Such storage shall be accomplished in

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1 compliance with the substantive requirements of 40 C.F.R. Part
2 264, Subparts I and J, and 22 California Code of Regulations,
3 Chapter 30, Article 24 ("Use and Management of Containers") and
4 Article 25 ("Tank Systems"). These requirements are applicable
5 or relevant and appropriate requirements for the O&M Activities.

6 4. With respect to requirements for the operation of
7 the groundwater treatment plant's VOC-stripper (i.e., air
8 stripper with vapor phase granulated activated carbon absorption
9 units), South Coast Air Quality Management District ("SCAQMD")
10 Rule 1167 was rescinded in December of 1988 and Settling Work
11 Defendant is not required to comply with this Rule despite any
12 other language in this Decree. Furthermore, some of the
13 regulations cited in the ROD have been changed by the SCAQMD.
14 The only requirements of the SCAQMD that Settling Work Defendant
15 is required to comply with in performing Work onsite are the
16 substantive requirements of the following applicable or relevant
17 and appropriate requirements for the groundwater Treatment Plant
18 (i.e., air stripper with vapor phase granulated activated carbon
19 ("GAC") absorption units):

20 a. SCAQMD Regulation XIII, as amended through
21 June 28, 1990; and

22 b. SCAQMD Rule 1401, as adopted on June 1, 1990.

23 G. System Operation Minimum Standards. The Work to be
24 performed shall achieve the Performance Standards as defined in
25 Section IV of this Consent Decree (Definitions) and shall, at a
26 minimum, achieve the following standards during system operation:

27 1. All groundwater to be extracted shall be treated by

Settling Work Defendant to a level such that the following chemicals do not exceed their respective MCL:

Chemical

MCL

PCE

5.0 micrograms/liter

TCE

5.0 micrograms/liter

2. All treated groundwater shall be disinfected and then blended by the Settling Work Defendant to meet all legal requirements for introduction of the blended water into the City's water supply system, including, but not limited to, the MCL for nitrate.

3. Settling Work Defendant shall operate and maintain the facilities it is required to operate and maintain in such a way as to ensure that exceedence of the drinking water standards promulgated and in effect on the date of delivery (other than the MCL for nitrate), regardless of when any such standards were promulgated, shall result in the immediate, and, in all cases where possible, automatic shut-down of the groundwater treatment plant and water delivery system. Such a shut-down shall not, in and of itself, release Settling Work Defendant from any other requirement of this Decree and specifically shall not, in and of itself, affect the requirement that Settling Work Defendant pays stipulated penalties for failure to extract and deliver water in the amounts and of the quality required by Paragraphs G.3 and H.1 of this Section, respectively, where such failure is due to any cause other than a Design Defect or a construction defect.

H. Extraction Requirements.

1. The Settling Work Defendant shall extract and treat

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1 an annual average of 9,000 g.p.m. of contaminated groundwater
2 except as otherwise provided in this Section. Settling Work
3 Defendant shall purvey all treated groundwater which satisfies
4 the treatment standards established by Paragraphs G and H of this
5 Section up to an amount which, when blended with the blending
6 water, will meet the City's Water Demand (as defined in the
7 Second Stage Statement of Work) without resulting in a nitrate
8 concentration in the blended water that exceeds the promulgated
9 MCL for nitrate in effect at that time; provided however that, in
10 order to maximize the Settling Work Defendant's use of treated
11 groundwater while providing a margin of safety in achieving
12 compliance with the MCL for nitrate, the Settling Work Defendant
13 shall be deemed to be in compliance with this Paragraph if it:

14 a. Achieves at all times a level of nitrate in
15 the blended water which is no greater than eighty-nine percent
16 (89%) of the promulgated MCL for nitrate that is in effect at the
17 time of the blending;

18 b. Extracts contaminated groundwater at an annual
19 average rate of 9,000 g.p.m. at all times when the nitrate level
20 in the extracted groundwater does not exceed 50 mg/l as nitrate;
21 and

22 c. Maximizes the use of the extracted groundwater
23 to the degree possible when the nitrate level in the extracted
24 groundwater exceeds 50 mg/l as nitrate.

25 2. Notwithstanding the requirements of Paragraph H.1
26 of this Section, the Settling Work Defendant shall not be charged
27 a stipulated penalty for failure to meet a nitrate level

1 specified in that Paragraph except where the nitrate
2 concentrations of the blended water exceed the promulgated MCL
3 for nitrate in effect at the time of the blending.

4 3. Settling Work Defendant shall maximize the amount
5 of extraction from the Phase I and Phase II extraction wells and
6 shall preferentially extract groundwater from these wells to meet
7 its Water Demand as limited by the amount of water the Settling
8 Work Defendant is required to accept pursuant to Paragraph H.1 of
9 this Section.

10 4. Settling Work Defendant shall extract, treat and
11 use its best efforts to vend or discharge, in compliance with
12 Paragraphs F and G of this Section, additional groundwater such
13 that the total amount of water extracted, treated and then
14 delivered by the Settling Work Defendant, vended or discharged
15 equals or exceeds 9,000 g.p.m. on an annual average. Extraction
16 from the City's liquid phase GAC wellfield located at 164 West
17 Magnolia Street, Burbank, California, may be counted towards
18 Settling Work Defendant's achievement of the 9,000 g.p.m. annual
19 average extraction requirement. Settling Work Defendant shall be
20 subject to stipulated penalties if it fails to achieve the 9,000
21 g.p.m. annual average extraction requirement, unless such failure
22 is due to nitrate levels in the extracted groundwater which
23 exceed 50 mg/l as nitrate.

24 I. Settling Work Defendant shall not be obligated to meet
25 the requirements of this Section, Paragraph H.1 if a new drinking
26 water standard is promulgated after August 1, 1996, ~~this Consent~~
27 ~~Decree is entered~~, EPA has identified such standard as applicable

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1 or relevant and appropriate for the treated groundwater and
2 necessary to protect public health or the environment and such
3 standard cannot be met without modifying the facilities
4 constructed pursuant to Section VII, Subpart A of the First
5 Consent Decree or changing their operation.

6 VII. ADDITIONAL RESPONSE ACTIONS

7 A. In the event that EPA determines or the Settling Work
8 Defendant proposes that additional response actions are necessary
9 to meet the Performance Standards or to carry out the interim
10 remedy selected in the ROD, notification of such additional
11 response actions shall be provided to EPA and to each of the
12 Settling Defendants.

13 B. Within thirty (30) days of receipt of notice from EPA or
14 Settling Work Defendant pursuant to Paragraph A of this Section
15 that additional response actions are necessary (or such longer
16 time as may be specified by EPA), Settling Work Defendant shall
17 submit for approval by EPA, after reasonable opportunity for
18 review and comment by the State, a work plan for the additional
19 response actions. The plan shall conform to the applicable
20 requirements under law or EPA guidance. Upon approval of the
21 plan pursuant to Section XII (Submissions Requiring Agency
22 Approval), Settling Work Defendant shall implement the plan for
23 additional response actions in accordance with the schedule
24 contained therein.

25 C. Any additional response actions that Settling Work
26 Defendant proposes are necessary to meet the Performance
27 Standards or to carry out the interim remedy selected in the ROD

1 shall be subject to approval by EPA, after reasonable opportunity
2 for review and comment by the State, and, if authorized by EPA,
3 shall be completed by Settling Work Defendant in accordance with
4 plans, specifications, and schedules approved or established by
5 EPA pursuant to Section XII (Submissions Requiring Agency
6 Approval).

7 D. Any Settling Defendant required to fund, perform, or
8 operate and maintain completed additional response actions may
9 invoke the procedures set forth in Section XX (Dispute
10 Resolution) to dispute EPA's determination that additional
11 response actions are necessary to meet the Performance Standards
12 or to carry out the interim remedy selected in the ROD. Such a
13 dispute shall be resolved pursuant to Section XX (Dispute
14 Resolution), Paragraph F of this Consent Decree.

15 E. The United States and the State reserve all rights
16 against Settling Defendants, pursuant to Paragraph E of Section
17 XXII (Covenants Not to Sue by Plaintiffs), if any new
18 requirement(s) are promulgated or if any requirement(s)
19 promulgated on or before the Effective Date of this Consent
20 Decree as defined in Section XXVIII (Effective Date) subsequently
21 are changed and such requirement(s) are determined by EPA to be
22 both (a) applicable or relevant or appropriate and (b) necessary
23 to insure that the interim remedy is protective of human health
24 and the environment and such standard cannot be met without
25 modifying the facilities to be constructed pursuant to the First
26 CD or UAO 92-12 or changing their operation.

27 F. If EPA determines that reinjection capacity is necessary

1 for the remedy to meet the Performance Standards ~~or to protect~~
2 ~~human health or the environment~~, the development of such capacity
3 shall not be considered an Additional Response Action under this
4 Section. The United States and the State reserve all rights
5 against Settling Defendants as provided in Paragraph E of Section
6 XXII (Covenants Not to Sue by Plaintiffs) concerning installation
7 of such capacity.

8 VIII. EPA PERIODIC REVIEW

9 A. Settling Work Defendant shall conduct any studies and
10 investigations as requested by EPA in order to permit EPA to
11 conduct reviews at least every five years as required by Section
12 121(c), 42 U.S.C. § 9621(c) of CERCLA and any applicable
13 regulations.

14 B. Settling Defendants and, if required by Sections
15 113(k)(2) or 117 of CERCLA, 42 U.S.C. §§ 9613(k)(2) or 9617, the
16 public will be provided with an opportunity to comment on any
17 further response actions proposed by EPA as a result of the
18 review conducted pursuant to Section 121(c), of CERCLA, 42 U.S.C.
19 § 9621(c), and to submit written comments for the record during
20 the public comment period. After the period for submission of
21 written comments is closed, the Regional Administrator, EPA
22 Region IX, or his/her delegate will determine in writing whether
23 further response actions are appropriate.

24 C. The United States reserves the right to institute
25 proceedings in this action or in a new action, or to issue an
26 administrative order seeking to compel Settling Defendants or any
27 of them (1) to perform further response actions relating to the

1 Site or (2) to reimburse the United States for additional costs
2 of response if the Regional Administrator, EPA Region IX, or
3 his/her delegate determines that information received, in whole
4 or in part, during the review conducted pursuant to Section
5 121(c) of CERCLA, 42 U.S.C. § 9621(c), indicates that the
6 Remedial Action or the O&M Activities are not protective of human
7 health or the environment.

8 IX. QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS

9 A. Settling Work Defendant shall use quality assurance,
10 quality control, and chain of custody procedures for all
11 treatability, design, compliance and monitoring samples in
12 accordance with EPA's "Interim Guidelines and Specifications For
13 Preparing Quality Assurance Project Plans," December 1980, (QAMS-
14 005/80); "Data Quality Objective Guidance," (EPA/540/G87/003 and
15 004); "EPA NEIC Policies and Procedures Manual," May 1978,
16 revised November 1984, (EPA 330/9-78-001-R); and subsequent
17 amendments to such guidelines upon notification by EPA to
18 Settling Work Defendant of such amendment. Amended guidelines
19 shall apply only to procedures conducted after such notification.
20 Prior to the commencement of any monitoring project under this
21 Consent Decree, Settling Work Defendant shall submit to EPA for
22 approval, after a reasonable opportunity for review and comment
23 by the State, a Quality Assurance Project Plan ("QAPP") to EPA
24 and the State that is consistent with the O&M Second Stage Work
25 Plan, the NCP and applicable guidance documents. If relevant to
26 the proceeding, the Parties agree that validated sampling data
27 generated in accordance with the QAPP(s) and reviewed and

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1 approved by EPA shall be admissible as evidence, without
2 objection, in any proceeding under this Consent Decree. Settling
3 Work Defendant shall ensure that EPA and State personnel and
4 their authorized representatives are allowed access at reasonable
5 times to all laboratories utilized by Settling Work Defendant in
6 implementing this Consent Decree. In addition, Settling ~~Work~~
7 Defendant shall ensure that such laboratories shall analyze all
8 samples submitted by EPA pursuant to the QAPP for quality
9 assurance monitoring. Settling Work Defendant shall ensure that
10 the laboratories it utilizes for the analysis of samples taken
11 pursuant to this Consent Decree perform all analyses according to
12 accepted EPA methods. Accepted EPA methods consist of those
13 methods which are documented in the "Contract Lab Program
14 Statement of Work for Inorganic Analysis" and the "Contract Lab
15 Program Statement of Work for Organic Analysis," dated February
16 1988, and any amendments made thereto during the course of the
17 implementation of this Consent Decree. Settling Work Defendant
18 shall ensure that all laboratories it uses for analysis of
19 samples taken pursuant to this Consent Decree participate in an
20 EPA or EPA-equivalent QA/QC program.

21 B. Upon request, Settling Work Defendant shall allow split
22 or duplicate samples to be taken by EPA and the State or their
23 authorized representatives. Settling Work Defendant shall
24 include in the O&M Second Stage Work Plan a schedule of routine,
25 pre-scheduled sampling events, for example those required by the
26 California Department of Health Services under the operating
27 permit for the Burbank OU groundwater/drinking water treatment

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1 facilities, or under existing regulations. As regulations or
2 permit conditions change and affect this schedule, Settling Work
3 Defendant shall submit revised schedules as amendments to the O&M
4 Second Stage Work Plan. For non-routine, non-emergency sampling
5 events, for example an unscheduled performance evaluation study
6 of the treatment plant, Settling Work Defendant shall notify EPA
7 and the State not less than fourteen (14) days in advance of any
8 sample collection activity unless shorter notice is agreed to by
9 EPA. In addition, EPA and the State shall have the right to take
10 any additional samples that EPA or the State deem necessary.
11 Upon request, EPA and the State shall allow any Settling
12 Defendant to take split or duplicate samples of any samples it
13 takes as part of either Plaintiff's oversight of the
14 implementation of the O&M activities.

15 C. Settling Work Defendant shall submit to EPA ~~two (2)~~ three
16 (3) copies each of the results of all sampling and/or tests
17 performed, or data gathered pursuant to the implementation of
18 this Consent Decree unless EPA agrees otherwise. Such results
19 and other data may be submitted as part of the progress reports
20 required pursuant to Paragraph A.1 of Section XI (Reporting
21 Requirements). EPA will provide to Settling Work Defendant's
22 Project Coordinator results of analyses conducted by EPA pursuant
23 to Section IX, (Quality Assurance, Sampling and Data Analysis),
24 Paragraph B of this Consent Decree.

25 D. Notwithstanding any provision of this Consent Decree,
26 the United States and the State hereby retain all of their
27 information gathering and inspection authorities and rights,

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1 including enforcement actions related thereto, under CERCLA, RCRA
2 and any other applicable statutes or regulations.

3 E. Settling Work Defendant may deviate from EPA guidance on
4 Quality Assurance/Quality Control ("QA/QC") as referenced in
5 Section I, Paragraph A of this Consent Decree under the following
6 circumstances. For compliance monitoring required under Federal
7 and/or State drinking water regulations, Settling Work Defendant
8 may follow QA/QC procedures required under those regulations so
9 long as EPA determines that such procedures are equally
10 protective of human health and the environment as EPA QA/QC
11 procedures.

12 X. ACCESS

13 A. Commencing upon the date of entry of this Consent Decree
14 and terminating upon issuance of a final ROD for the Site, the
15 Owner Settling Defendants agree to provide the United States, the
16 State, and their representatives, including EPA and its
17 contractors, access at all reasonable times to real property to
18 which EPA informs such Owner Settling Defendants access is
19 required for the implementation of this Consent Decree, to the
20 extent access to the property is controlled by Owner Settling
21 Defendants, for the purposes of conducting any activity related
22 to this Consent Decree including, but not limited to:

23 a. Monitoring the O&M Activities;

24 b. Verifying any data or information submitted to the
25 United States;

26 c. Conducting investigations relating to contamination
27 at or near the Site;

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d. Obtaining samples;

e. Assessing the need for, planning, or implementing additional response actions at or near the Site;

f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, pursuant to Section XXV (Access to Information); and

g. Assessing Settling Defendants' compliance with this Consent Decree.

B. Except to the extent Plaintiffs deem necessary to protect human health or the environment, Plaintiffs will provide the affected Settling Defendant with twenty-four (24) hours notice prior to entry to properties accessed pursuant to this Consent Decree. In exercising their rights to access under this Paragraph, Plaintiffs shall to the extent practicable not unreasonably interfere with Settling Defendants' business or municipal activities. However, nothing in this Paragraph shall provide Settling Defendants with any claim or cause of action whatsoever against Plaintiffs, including without limitation any claim for injunctive relief. In addition, it shall not constitute an unreasonable interference for Plaintiffs to take any action they deem necessary to avoid endangerment to human health or the environment or to respond to an emergency.

C. To the extent that any other real property to which access is required for the implementation of this Consent Decree is owned or controlled by persons other than Owner Settling Defendants, Settling Work Defendant shall use best efforts to

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1 secure from such persons access for Settling Work Defendant, as
2 well as for the United States and the State and their
3 representatives, including, but not limited to, their
4 contractors, as necessary to effectuate this Consent Decree. For
5 purposes of this Paragraph, "best efforts" may include the
6 payment of reasonable sums of money in consideration of access.
7 "Best efforts" does not include the exercise of eminent domain,
8 condemnation or similar authorities. Settling Defendants shall
9 coordinate and cooperate with Settling Work Defendant as
10 appropriate and necessary to obtain such access. If any access
11 required to effectuate this Consent Decree is not obtained within
12 forty-five (45) days of the date of lodging of this Consent
13 Decree, or within forty-five (45) days of the date EPA notifies
14 the Settling Work Defendant in writing that additional access
15 beyond that previously secured is necessary, Settling Work
16 Defendant shall promptly notify the United States, and shall
17 include in that notification a summary of the steps Settling Work
18 Defendant, or other Settling Defendants in coordination and
19 cooperation with Settling Work Defendant, have taken pursuant to
20 this Section to attempt to obtain access. The United States or
21 the State may, as either deems appropriate, assist Settling Work
22 Defendant in obtaining access. Lockheed Martin shall reimburse
23 the United States or the State, in accordance with the procedures
24 in Section XVII (Reimbursement of Response Costs), for all costs
25 incurred by the United States or the State in obtaining access
26 pursuant to this Section.

27 D. Notwithstanding any provision of this Consent Decree,

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1 the United States and the State retain all of their access
2 authorities and rights, including enforcement authorities related
3 thereto, under CERCLA, RCRA and any other applicable statute or
4 regulations.

5 XI. REPORTING REQUIREMENTS

6 A. In addition to any other requirement of this Consent
7 Decree, Settling Work Defendant shall submit to EPA and the
8 State, with the frequency described below, ~~two (2)~~ three (3)
9 copies each of written progress reports that: (a) describe the
10 actions which have been taken toward achieving compliance with
11 this Consent Decree during the previous reporting period; (b)
12 include a summary of all results of sampling and tests and all
13 other data received or generated by Settling Work Defendant or
14 its contractors or agents in the previous reporting period; (c)
15 identify all work plans, plans and other deliverables required by
16 this Consent Decree completed and submitted during the previous
17 period; (d) describe all actions, including, but not limited to,
18 data collection and implementation of work plans, which are
19 scheduled for the subsequent two reporting periods, (e) include
20 information regarding unresolved delays encountered or
21 anticipated that may affect the future schedule for
22 implementation of the O&M Activities, and a description of
23 efforts made to mitigate those delays or anticipated delays; (f)
24 include any modifications to the O&M Second Stage Work Plan or
25 other schedules that Settling Work Defendant has proposed to EPA
26 or that have been approved by EPA; (g) describe all activities
27 undertaken in support of the Community Relations Plan during the

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1 period dating from the submission of the last progress report
2 those to be undertaken prior to the submission of the next
3 progress report, and h) report any out-of-state shipments of
4 Waste Materials that occurred during the previous reporting
5 period. Settling Work Defendant shall submit these progress
6 reports to EPA with the frequency described below, commencing
7 from the entry of this Consent Decree until EPA notifies the
8 Settling Work Defendant pursuant to Paragraph B.2 of Section XV
9 (Certification of Completion). If requested by EPA or the State,
10 Settling Work Defendant shall also provide briefings for EPA and
11 the State to discuss the progress of the Work.

12 1. The progress reports shall be submitted with the
13 following frequency:

14 a. Semi-annually from the date of entry of this
15 Consent Decree until one year prior to the Date of Commencement;

16 b. Quarterly during the year prior to the Date of
17 Commencement;

18 c. Monthly commencing with the Date of
19 Commencement for a period of three years ("the Monthly Reporting
20 Requirement").

21 d. Quarterly from completion of the Monthly
22 Reporting Requirement until EPA notifies the Settling Work
23 Defendant pursuant to Paragraph B.2 of Section XV (Certification
24 of Completion).

25 The Settling Work Defendant shall notify EPA of any change in the
26 schedule described in the progress reports for the performance of
27 any activity, including, but not limited to, data collection and

1 implementation of work plans, no later than seven (7) days prior
2 to the performance of the activity.

3 B. Upon the occurrence of any event during performance of
4 the O&M Activities that Settling Work Defendant is required to
5 report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or
6 Section 304 of the Emergency Planning and Community Right-to-know
7 Act (EPCRA), 42 U.S.C. § 11004, Settling Work Defendant shall
8 within twenty-four (24) hours of the onset of such event orally
9 notify the EPA Project Coordinator or the Alternate EPA Project
10 Coordinator (in the event of the unavailability of the EPA
11 Project Coordinator), or, in the event that neither the EPA
12 Project Coordinator or Alternate EPA Project Coordinator is
13 available, the Emergency Response Section, Region IX, United
14 States Environmental Protection Agency. These reporting
15 requirements are in addition to the reporting required by CERCLA
16 Section 103, 42 U.S.C. § 9603 or EPCRA Section 304, 42 U.S.C.
17 § 11004.

18 C. Within twenty (20) days of the onset of such an event,
19 Settling Work Defendant shall furnish to Plaintiffs a written
20 report, signed by the Settling Work Defendant's Project
21 Coordinator, setting forth the events which occurred and the
22 measures taken, and to be taken, in response thereto. Within
23 thirty (30) days of the conclusion of such an event, Settling
24 Work Defendant shall submit a report setting forth all actions
25 taken in response thereto.

26 D. Settling Work Defendant shall submit ~~two (2)~~ three (3)
27 copies of all plans, reports, and data required by the O&M Second

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1 Stage Work Plan. Settling Work Defendant shall simultaneously
2 submit ~~two (2)~~ three (3) copies of all such plans, reports and
3 data to the State.

4 E. All reports and other documents submitted by Settling
5 Work Defendant to EPA (other than the progress reports referred
6 to above) which purport to document Settling Work Defendant's
7 compliance with the terms of this Consent Decree shall be signed
8 by an authorized representative of the Settling Work Defendant.

9 F. Settling Work Defendant shall immediately notify EPA of
10 any MCL or State Action Level ("SAL") exceedences when such
11 exceedences occur at a point of compliance as defined under
12 Federal or State drinking water regulations.

13 XII. SUBMISSIONS REQUIRING AGENCY APPROVAL

14 A. After review of the O&M Second Stage Work Plan or other
15 item which is required to be submitted for approval pursuant to
16 this Consent Decree, EPA, after reasonable opportunity for review
17 and comment by the State, shall: (a) approve, in whole or in
18 part, the submission; (b) approve the submission upon specified
19 conditions; (c) modify the submission to cure the deficiencies;
20 (d) disapprove, in whole or in part, the submission, directing
21 that the Settling Work Defendant modify the submission; or (e)
22 any combination of the above.

23 B. In the event of approval, approval upon conditions,
24 modification or partial disapproval by EPA, pursuant to this
25 Section, Paragraph A (a), (b), (c) or (d), Settling Work
26 Defendant shall proceed to take any action required by the O&M
27 Second Stage Work Plan or other item, as approved or modified by

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1 EPA subject only to its right to invoke the Dispute Resolution
2 procedures set forth in Section XX (Dispute Resolution) with
3 respect to the modifications or conditions made by EPA. However,
4 in the event that EPA modifies the submission pursuant to this
5 Section, Paragraph D, to cure continued deficiencies, and the
6 submission has a material defect not cured upon resubmittal, EPA
7 retains its right to impose stipulated penalties, as provided in
8 Section XXI (Stipulated Penalties), retroactive to the date of
9 the initial submittal.

10 C. Upon receipt of a notice of disapproval of a
11 resubmitted O&M Second Stage Work Plan or other item, or portion
12 thereof pursuant to this Section, Paragraph D, Settling Work
13 Defendant shall, within fourteen (14) days or such other time as
14 specified by EPA in such notice, correct the remaining
15 deficiencies and resubmit the O&M Second Stage Work Plan or other
16 item for approval. Any disapproval by EPA shall include an
17 explanation of why the deliverable is inadequate. If the
18 resubmitted deliverable is inadequate, Settling Work Defendant
19 shall be deemed to be in violation of this Consent Decree. Any
20 stipulated penalties applicable to the submission, as provided in
21 Section XXI (Stipulated Penalties), shall accrue during the
22 fourteen-day (14-day) period or otherwise specified period but
23 shall not be payable unless the resubmission is disapproved or
24 modified due to a material defect as provided in this Section,
25 Paragraph E.

26 Notwithstanding the receipt of an initial notice of
27 disapproval pursuant to this Section, Paragraph A, D or E,

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1 Settling Work Defendant shall proceed, at the direction of EPA,
2 to take any action required by any non-deficient portion of the
3 submission. Implementation of any non-deficient portion of a
4 submission shall not relieve Settling Work Defendant of any
5 liability for stipulated penalties under Section XXI (Stipulated
6 Penalties).

7 D. In the event that a resubmitted O&M Second Stage Work
8 Plan or other item, or portion thereof, is disapproved by EPA,
9 EPA may again require the Settling Work Defendant to correct the
10 deficiencies, in accordance with the preceding Paragraphs. EPA
11 also retains the right to amend or develop the O&M Second Stage
12 Work Plan or other item. Settling Work Defendant shall implement
13 the O&M Second Stage Work Plan or other item as amended or
14 developed by EPA, subject only to its right to invoke the
15 procedures set forth in Section XX (Dispute Resolution).

16 E. If upon resubmission, the O&M Second Stage Work Plan or
17 other item is disapproved or modified by EPA due to a material
18 defect, Settling Work Defendant shall be deemed to have failed to
19 submit the O&M Second Stage Work Plan or other item timely and
20 adequately unless Settling Work Defendant invokes the dispute
21 resolution procedures set forth in Section XX (Dispute
22 Resolution) and EPA's action is overturned pursuant to that
23 Section. The provisions of Section XX (Dispute Resolution) and
24 Section XXI (Stipulated Penalties) shall govern the
25 implementation of the O&M Activities and accrual and payment of
26 any stipulated penalties during Dispute Resolution. If EPA's
27 disapproval or modification is upheld, stipulated penalties shall

1 accrue for such violation from the date on which the initial
2 submission was originally required, as provided in this Section,
3 Paragraph C.

4 F. The O&M Second Stage Work Plan and other items required
5 to be submitted to EPA under this Consent Decree shall, upon
6 approval or modification by EPA, be enforceable under this
7 Consent Decree. In the event EPA approves or modifies a portion
8 of the O&M Second Stage Work Plan or other item required to be
9 submitted to EPA under this Consent Decree, the approved or
10 modified portion shall be enforceable under this Consent Decree.

11 G. Items required to be submitted for approval by EPA
12 pursuant to this Consent Decree are set forth in the Second Stage
13 Statement of Work, Appendix 4 to this Consent Decree.

14 XIII. PROJECT COORDINATORS

15 A. Within thirty (30) days of entry of this Consent Decree,
16 Settling Work Defendant, Lockheed Martin, the UAO Parties, the
17 State and EPA will notify each other, in writing, of the name,
18 address and telephone number of their respective designated
19 Project Coordinators and Alternate Project Coordinators. If a
20 Project Coordinator or Alternate Project Coordinator initially
21 designated is changed, the identity of the successor will be
22 given to the other parties at least five (5) working days before
23 the changes occur, unless impracticable, but in no event later
24 than the actual day the change is made. The Settling Work
25 Defendant's Project Coordinator shall be subject to disapproval
26 by EPA and shall have the technical expertise sufficient to
27 adequately oversee all aspects of the O&M Activities. The

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1 Settling Work Defendant's Project Coordinator shall not be an
2 attorney for any of the Settling Defendants in this matter. He
3 or she may assign other representatives, including other
4 contractors, to serve as a Site representative for oversight of
5 performance of daily operations during O&M activities.

6 B. Plaintiffs may designate other representatives,
7 including, but not limited to, EPA and State employees, and
8 Federal and State contractors and consultants, to observe and
9 monitor the progress of any activity undertaken pursuant to this
10 Consent Decree. EPA's Project Coordinator and Alternate Project
11 Coordinator shall have the authority lawfully vested in a
12 Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC)
13 by the National Contingency Plan, 40 C.F.R. Part 300. In
14 addition, EPA's Project Coordinator or Alternate Project
15 Coordinator shall have authority, consistent with the National
16 Contingency Plan, to halt any O&M Activities required by this
17 Consent Decree and to take any necessary response action when the
18 Project Coordinator determines that conditions at the Site
19 constitute an emergency situation or may present an immediate
20 threat to public health or welfare or the environment due to
21 release or threatened release of Waste Material.

22 C. EPA's Project Coordinator and the Defendants' Project
23 Coordinators will meet on a regular basis as deemed appropriate
24 by EPA's Project Coordinator.

25 XIV. FUNDING OF RESPONSE ACTIVITIES

26 A. Within sixty (60) days of entry of this Consent Decree,
27 Lockheed Martin shall establish and maintain financial security

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1 in the amount of the then net present value [to be calculated
2 based upon agreed upon discount and inflation rates, and subject
3 to EPA approval of calculation] of the O&M Activities for the
4 Upstream Facilities, in one or a combination of the following
5 forms:

6 1. A surety bond guaranteeing performance of the O&M
7 Activities for the Upstream Facilities;

8 2. One or more irrevocable letters of credit;

9 3. A trust fund or combination of trust funds;

10 4. A guarantee to fund the O&M Activities for the
11 Upstream Facilities by one or more parent corporations or
12 subsidiaries, or by one or more unrelated corporations that have
13 a substantial business relationship with Lockheed Martin;

14 5. A demonstration that Lockheed Martin satisfies the
15 requirements of 40 C.F.R. Part 264.143(f); or

16 6. A demonstration, by submittal of its annual report
17 on Form 10-K filed with the Securities and Exchange Commission,
18 that Lockheed Martin possesses the requisite financial ability to
19 assure completion of the O&M Activities for the Upstream
20 Facilities.

21 B. The amount of financial security that Lockheed Martin is
22 required to maintain shall be decreased in the following
23 increments:

24 1. Four years after the Date of Commencement,
25 Lockheed Martin shall maintain financial security in the amount
26 of \$_____ [amount certain to be calculated based on agreed to
27 inflation and discount rates].

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2. Nine years after the Date of Commencement, Lockheed Martin shall maintain financial security in the amount of \$_____ [amount certain to be calculated based on agreed to inflation and discount rates].

3. Thirteen years after the Date of Commencement, Lockheed Martin shall maintain financial security in the amount of \$_____ [amount certain to be calculated based on agreed to inflation and discount rates.]

C. Within sixty (60) days of entry of this Consent Decree, ~~Lockheed Martin the Settling Cash Defendants~~ shall cause the funds in the escrow account established pursuant to the Settlement Agreement reached in the action entitled Lockheed Corporation v. Crane Company, United States District Court, Central District of California No. CV 94-2717 MRP (Tx) ("Escrow Account") to be transferred into a segregated account ("Second Consent Decree Account").

D. Within thirty (30) days prior to the Date of Commencement, Lockheed Martin shall establish a trust account ("O&M Trust Account"). The O&M Trust Account shall be used to satisfy the ~~Settling Cash Defendants' Lockheed Martin's~~ obligation to fund the O&M Activities for the Upstream Facilities and other obligations as required by this Section XIV (Funding of Response Activities), and Section VI (Performance of the Work), Paragraphs C.7 of this Consent Decree.

1. The costs of O&M Activities with respect to the Upstream Facilities, including but not limited to the costs of rectifying any construction defect in the Upstream Facilities,

1 all costs of additional response actions required by EPA pursuant
2 to Section VII (Additional Response Actions) related to the
3 Upstream Facilities, and costs incurred for the Site pursuant to
4 Section VIII (EPA Periodic Review) shall be paid from the O&M
5 Trust Account subject to the limitations and in accordance with
6 the provisions set forth in this Section.

7 2. All costs of O&M Activities with respect to the
8 Downstream Facilities, including but not limited to the costs of
9 rectifying any construction defect in the Downstream Facilities,
10 and all costs of additional response actions required by EPA
11 pursuant to Section VII (Additional Response Actions) related to
12 the Downstream Facilities shall be paid directly by the City and
13 shall not be subject to reimbursement from the O&M Trust Account.
14 The City's contracting and accounting systems shall be
15 established so as to clearly distinguish between costs incurred
16 for O&M Activities or other activities associated with the
17 Upstream Facilities and costs incurred for O&M Activities or
18 other activities associated with the Downstream Facilities.

19 E. Lockheed Martin and the City shall, by January 1, 1999,
20 jointly retain an independent cost estimating consultant ("Cost
21 Consultant") acceptable to both parties and EPA, whose
22 responsibilities shall include preparation of the Annual Budgets
23 and Audit Reports for O&M Activities with respect to the Upstream
24 Facilities required by this Section. The Cost Consultant may be
25 replaced by mutual agreement of Lockheed Martin and the City upon
26 thirty (30) days written notice to EPA and the Cost Consultant,
27 subject to approval by EPA. Either the City or Lockheed Martin

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1 may petition EPA for the replacement of the Cost Consultant.

2 1. If Lockheed Martin, the City and EPA are unable to
3 agree upon a Cost Consultant by January 1, 1999, Lockheed Martin
4 and the City shall, within thirty (30) days thereafter, each
5 submit a list of three (3) cost estimating consultants to the
6 other party and to EPA, along with information regarding the
7 qualifications of each cost estimating consultant on its list.
8 Within ten (10) days after both lists have been submitted, the
9 City and Lockheed Martin may each veto one cost estimating
10 consultant from the other's list. EPA shall select the Cost
11 Consultant from the cost estimating consultants remaining on one
12 or both of the lists, unless all such consultants are
13 unacceptable to EPA.

14 2. The Cost Consultant may retain a subcontractor to
15 perform some of his or her functions, as described herein. Any
16 such subcontractor shall be approved by the City, Lockheed Martin
17 and EPA prior to performing any work.

18 3. In the event of the resignation of the Cost
19 Consultant, the City, Lockheed Martin and EPA shall attempt to
20 agree upon the selection of a replacement. If the parties cannot
21 agree upon a replacement, the procedures described in paragraph E
22 above shall be employed to select a replacement. The list of
23 three (3) cost estimating consultants referred to in subparagraph
24 E.1 shall be submitted forty-five (45) days prior to the
25 effective date of resignation of the Cost Consultant or such
26 other date as may be mutually agreed upon by the City, Lockheed
27 Martin and EPA.

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1 4. The Cost Consultant's fees shall be paid from the
2 O&M Trust Account.

3 F. It shall be the Cost Consultant's responsibility to
4 independently use his or her best technical judgment to prepare
5 an Annual Budget for O&M Activities with respect to the Upstream
6 Facilities for each of the years during which such O&M Activities
7 are required by this Decree ("Annual Budget"). The Annual Budget
8 shall be developed in the following manner:

9 1. No later than one hundred and twenty (120) days
10 prior to the Date of Commencement, Lockheed Martin shall provide
11 the Cost Consultant and the City with non-proprietary information
12 regarding its operation and maintenance costs with respect to the
13 Upstream Facilities for the prior year.

14 2. Ninety (90) days prior to the Date of Commencement,
15 and annually thereafter, the City may submit to the Cost
16 Consultant, Lockheed Martin and EPA its estimate of the cost of
17 O&M Activities with respect to the Upstream Facilities ~~O&M~~
18 ~~Activities~~ for the one-year period beginning on the Date of
19 Commencement ~~or on the anniversary thereof for Commencement or on~~
20 the anniversary thereof for the upcoming year. Such an estimate
21 may be submitted by the City in advance of each of the eighteen
22 (18) years for which O&M Activities are required by this Decree.

23 3. Sixty (60) days prior to the Date of Commencement,
24 and annually thereafter, Lockheed Martin and EPA may submit
25 comments to the Cost Consultant on the City's estimate submitted
26 pursuant to Paragraph F.1 of this Section.

27 4. Thirty (30) days prior to the Date of Commencement,

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1 and annually thereafter, the Cost Consultant shall establish the
2 Annual Budget based on: (1) O&M Activities expenditures with
3 respect to the Upstream Facilities during prior years; (2) the
4 City of Burbank's estimate; (3) Lockheed Martin's comments
5 thereon, if any; 4) EPA's comments thereon, if any; and (5) any
6 other cost estimating factors deemed relevant by the Cost
7 Consultant.

8 5. The Annual Budget shall contain the following cost
9 categories relating to the Upstream Facilities: direct labor,
10 contracted-for labor, power, natural gas, liquid phase carbon,
11 vapor phase carbon, laboratory costs, supplies and materials,
12 disposal costs, permitting costs, replacement costs, insurance,
13 fees of the Cost Consultant and any other cost categories related
14 to the O&M Activities with respect to the Upstream Facilities
15 that the Cost Consultant deems appropriate for cost accounting
16 purposes. In addition, costs of compliance with the provisions
17 of Sections VII (Additional Response Actions) ~~with respect to the~~
18 ~~Upstream Facilities~~ and VIII ~~(EPA Periodic Review)~~ of this
19 Consent Decree ~~with respect to the Upstream Facilities~~ shall be
20 deemed to be O&M Activities and may be included in the Annual
21 Budget.

22 6. The Cost Consultant shall include a 10% contingency
23 for each cost category in the Annual Budget.

24 7. Lockheed Martin, the City and EPA shall each have
25 the right to invoke dispute resolution pursuant to Section XX
26 (Dispute Resolution) of this Consent Decree regarding the total
27 budgeted amount set forth in any Annual Budget, the amount

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1 budgeted for any cost item, the inclusion or exclusion of any
2 item from the Annual Budget, or any other matter related to the
3 establishment of the Annual Budget.

4 G. Lockheed ~~Martin~~ shall ensure that the O&M Trust Account
5 contains funds equal to or in excess of the Annual Budget
6 established for the upcoming year as of the Date of Commencement,
7 and as of each anniversary of that date, by causing funds from
8 the Second Consent Decree Account or its own funds to be
9 transferred to the O&M Trust Account. The City shall have no
10 obligation to undertake O&M Activities with respect to the
11 Upstream Facilities if the O&M Trust Account has not been funded
12 in the manner required by this Paragraph.

13 H. The City shall submit monthly statements to the trustee
14 of the O&M Trust Account ("Trustee") for payment. Each statement
15 shall be broken down into the same cost categories as set forth
16 in the Annual Budget. The statement shall include copies of all
17 relevant documentation, including purchasing documents, backup
18 documentation for all internal costs, and all invoices, including
19 backup documentation to support all invoiced contracted for
20 costs, and a declaration by an authorized representative of the
21 City that each amount requested in the statement is due and
22 payable to a party who provided materials or services for O&M
23 Activities with respect to the Upstream Facilities conducted in
24 accordance with the Second Consent Decree and the Second Stage
25 O&M Work Plan. The City shall simultaneously provide a copy of
26 each monthly statement to the Cost Consultant, Lockheed Martin
27 and EPA.

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1 1. Any monthly statement seeking payment for an
2 expenditure outside a cost category in the Annual Budget and any
3 statement which will cause the applicable Annual Budget cost
4 category amount to be exceeded must be accompanied by an
5 explanation of the necessity for that expenditure.

6 2. ~~Disbursements by the Trustee.~~

7 a. The Trustee shall promptly pay all amounts
8 requested in a monthly statement that satisfies the requirements
9 of this Section. ~~However, except that~~ Lockheed Martin and EPA
10 shall have the right to invoke dispute resolution pursuant to
11 Section XX (Dispute Resolution) of this Consent Decree with
12 regard to the necessity for any expenditure for which an
13 explanation is required, within five (5) days of receipt of the
14 monthly statement. If either Lockheed Martin or EPA invokes
15 dispute resolution as to any amount included in a monthly
16 statement, EPA shall make a preliminary determination, within ten
17 (10) working days of dispute resolution being invoked, ~~of~~
18 ~~concerning~~ whether the disputed amount should be paid. If EPA so
19 determines, Lockheed Martin shall pay the disputed amount within
20 thirty (30) days thereafter. Such amount shall be ~~promptly~~
21 reimbursed to Lockheed Martin if Lockheed Martin ~~thereafter~~
22 prevails in dispute resolution.

23 b. ~~In the event that EPA decides to take over~~
24 ~~some or all of the work required to be performed by the Settling~~
25 ~~Work Defendant pursuant to Section XXII (Covenants Not to Sue by~~
26 ~~Plaintiffs), Paragraph F, or Section XVIII (Indemnification and~~
27 ~~Insurance), Paragraph B, the Trustee shall reimburse EPA within~~

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thirty (30) days of EPA's written demand for EPA's costs not inconsistent with the National Contingency Plan which are incurred to take over and/or to perform such work. In the alternative, EPA may elect to be reimbursed for some or all of such costs as Site-Specific Future Response Costs pursuant to Section XVII (Reimbursement of Response Costs).

c. Notwithstanding whether EPA elects to be reimbursed for such costs pursuant to this Section or pursuant to Section XVII (Reimbursement of Response Costs), EPA shall not be subject to the requirements of this Section, including but not limited to Annual Budget and audit requirements, concerning such costs.

d. As is set forth in Section XXII (Covenants Not to Sue by Plaintiffs), Paragraph F of this Consent Decree, and subject to the limitations described in that Section and Paragraph, Lockheed Martin shall have the right to be reimbursed by Settling Work Defendant for that portion of such costs which is caused by the necessity for EPA to take over such work. As is set forth in Section XVIII (Indemnification and Insurance), Paragraph B, and subject to the limitations described in that Section and Paragraph, the City of Burbank shall not be required to reimburse Lockheed Martin for any portion of such costs if EPA takes over the work pursuant to that Section and Paragraph.

3. The Cost Consultant shall audit the City's requests for payments for expenditures on O&M Activities with respect to the Upstream Facilities on an annual basis. The audit shall cover the one-year period ending one hundred and eighty

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(180) days prior to the beginning of the period covered by the next Annual Budget and the Costs Consultant's audit report ("Audit Report") shall be provided to the City, Lockheed Martin and EPA at least one hundred and fifty (150) days prior to the beginning of the period covered by the next Annual Budget. The purpose of the audit is to: (1) assist the Cost Consultant in preparing the Annual Budget; and (2) to allow the parties to determine whether any unnecessary costs have been incurred.

4. Within sixty (60) days of receipt of an annual Audit Report, the City shall reimburse the O&M Trust Account for expenditures found to be unnecessary during the audited period.

5. Lockheed Martin, the City and EPA shall each have the right to invoke dispute resolution with respect to the finding in an Audit Report.

6. The Cost Consultant shall perform a final audit of the City's request for payments for O&M Activities with respect to the Upstream Facilities within ninety (90) days following EPA's approval of the Certificate of Completion pursuant to Section XV of this Decree. Lockheed and the City shall settle all accounts with the O&M Trust Account within thirty (30) days of the issuance of the Cost Consultant's final Audit Report. At that time, the Cost Consultant shall direct the Trustee and the Trustee shall be required to pay over all remaining funds in the O&M Trust Account, if any, to Lockheed Martin. Lockheed Martin, the City and EPA shall have the right to invoke dispute resolution with regard to the final accounting or the final Audit Report.

I. The City of Burbank shall utilize a competitive bidding process to secure all services and materials required to perform O&M Activities with respect to the Upstream Facilities that are susceptible to contract. Award of any contract to other than the "lowest responsible bidder" within the meaning of Burbank Municipal Code § ___, shall require a justification by the City ~~in compliance with~~ pursuant to applicable State and local law. Lockheed Martin hereby reserves all of its rights under State or local law concerning award of any such contract to any person or persons except the "lowest responsible bidder" within the meaning of Burbank Municipal Code § ____.

J. The City of Burbank shall utilize the lowest cost power source available for operating the Upstream Facilities. In no event shall the power costs exceed the lowest power pool cost in effect at the time.

K. Lockheed Martin may at any time propose that a capital expenditure be incurred to reduce O&M expenditures with respect to the Upstream Facilities. Any such proposal shall be simultaneously submitted to the Cost Consultant, the City and EPA. Any such proposal shall be limited to facilities that can be fully accommodated within "Area F" as shown on Appendix F to the First Consent Decree. In addition, any such proposal shall be limited to facilities for which the disturbance at Area F from grading and construction will be less than thirty (30) days, which period shall include all phases of any multi-phase proposal.

1. The Cost Consultant shall review the proposal and

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1 determine, based on generally accepted cost engineering
2 principles, whether the capital expenditure is economically
3 justified based on the size of the expenditure, the projected O&M
4 savings and the remaining life of the project.

5 2. If the Cost Consultant determines that the capital
6 expenditure is economically justified, Lockheed Martin may submit
7 a conceptual design of the proposed work to EPA for approval.
8 Such submittals shall be made in accordance with Section XII
9 (Submissions Requiring Agency Approval).

10 3. If EPA approves the conceptual design, Lockheed
11 Martin shall submit a final design for the proposed work. If EPA
12 approves the final design, Lockheed Martin shall proceed to
13 implement the capital improvement. Lockheed Martin shall be
14 solely responsible for funding the capital improvement.

15 L. Both the Upstream Facilities and the Downstream
16 Facilities shall be considered property of the City for all
17 purposes.

18 M. Commencing from the date the Settling Work Defendant
19 begins to operate the Upstream Facilities, and for a period not
20 to exceed the applicable State statute of limitations under which
21 Lockheed Martin may bring such an action against its design
22 contractors less sixty (60) days, the Settling Work Defendant may
23 assert as against Lockheed Martin that any of the Upstream
24 Facilities' failure (if any) to perform as originally designed is
25 due to a Design Defect. Commencing upon the Effective Date of
26 this Consent Decree (as defined in Section XXVIII), and for a
27 period not to exceed the applicable State statute of limitations

1 under which the UAO Parties may bring such an action against
2 their design contractors less sixty (60) days, the Settling Work
3 Defendant may assert as against the UAO Parties that the Blending
4 Facility's failure (if any) to perform as originally designed is
5 due to a Design Defect. The Parties agree that the date of
6 substantial completion of the Upstream Facilities was March 1,
7 1994 and the date of the substantial completion of the Blending
8 Facility was January 6, 1996.

9 1. The Settling Work Defendant, Lockheed, the UAO
10 Parties and EPA agree to the following procedures for the
11 resolution of disputes arising from claims that the Upstream
12 Facilities or the Blending Facility have failed to perform as
13 originally designed due to a Design Defect. These disputes may
14 include but are not limited to a determination as to whether or
15 not a failure to perform as originally designed occurred, whether
16 the failure (if any) was due to a Design Defect, the nature,
17 extent and scope of the repair or other work required to cause
18 the facility in question to meet designated operating standards,
19 the reasonableness and necessity of the costs incurred or to be
20 incurred for such work, and the reasonableness, necessity and
21 timeliness of steps taken to address or mitigate such damage
22 claims.

23 a. Upon the occurrence of a facility's failure to
24 perform as originally designed which the Settling Work Defendant
25 alleges to be due, in whole or in part, to a Design Defect in the
26 Upstream Facilities or the Blending Facility:

27 (1) If the alleged occurrence or failure

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1 causes or threatens a release of Waste Material from the Site
2 that constitutes an emergency situation or may present an
3 immediate threat to public health or welfare or the environment,
4 the Settling Work Defendant shall take all actions and provide
5 notifications required by Section XVI (Emergency Response). If
6 the alleged occurrence or failure does not come within the
7 provisions of Section XVI (Emergency Response), Settling Work
8 Defendant shall immediately advise the EPA of the alleged
9 occurrence or failure, by telephone or facsimile transmission.

10 (2) Settling Work Defendant shall provide a
11 written Notice of Design Defect to EPA within ten (10) days of
12 the date when Settling Work Defendant knew, or reasonably should
13 have known that the alleged occurrence or failure was caused by
14 an alleged Design Defect. The written Notice of Design Defect
15 shall include the basis for the allegation. The Settling Work
16 Defendant shall concurrently provide a copy of the written Notice
17 of Design Defect to either: 1) Lockheed Martin if the alleged
18 Design Defect relates to the Upstream Facilities, or 2) the UAO
19 Parties if the alleged Design Defect relates to the Blending
20 Facility.

21 b. The Settling Work Defendant shall take such
22 steps as EPA directs to commence repairs to the facility, and
23 shall take reasonable steps to mitigate all damages and costs
24 incurred as a result of the alleged Design Defect. Within five
25 (5) days of undertaking such steps, the Settling Work Defendant
26 shall advise EPA and all interested Parties, in writing and by
27 facsimile transmission, of the repairs and steps it has taken or

1 intends to undertake.

2 c. The Parties shall cooperate with one another
3 and immediately make available to each other: all facilities
4 pertaining to the failure and the alleged Design Defect; all
5 records pertaining to the failure and the alleged Design Defect;
6 all records pertaining to the operations and maintenance of the
7 facility including all repair records, all work plans or designs
8 for repair or mitigation of damages; all persons with information
9 about the failure and the alleged Design Defect; and all systems
10 that are claimed to be defective. The information to be made
11 available by the UAO Parties and Lockheed Martin shall include
12 but shall not be limited to applicable contracts and
13 correspondence with Lockheed Martin's or the UAO Parties' design
14 contractors, internal documentation relating to the design of the
15 facility with the alleged Design Defect, and "as-builts" of the
16 facility with the alleged Design Defect. The Parties shall make
17 good faith efforts to preserve evidence and information. The
18 Settling Work Defendant's good faith efforts may include but
19 shall not be limited to maintaining a videotape record or log of
20 the status or condition of the facility prior to the performance
21 of repairs or alterations, where practicable.

22 2. Not less than fifteen (15) nor more than thirty
23 (30) days after receipt of the Settling Work Defendant's written
24 Notice of Design Defect, the EPA shall make a Preliminary
25 Finding.

26 a. Lockheed Martin or the UAO Parties may submit
27 a written or oral response to the Settling Work Defendant's

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1 allegation within the fifteen (15) days.

2 b. The EPA's Preliminary Finding shall include a
3 preliminary determination as to whether the affected facility or
4 facilities failed to perform as originally designed; whether that
5 failure was, in whole or in part, due to a Design Defect; a
6 preliminary allocation of financial responsibility among the
7 Parties to this Consent Decree; and a preliminary finding as to
8 the reasonableness and necessity of any repairs or other work
9 done or proposed by the Settling Work Defendant as a result of
10 the alleged Design Defect.

11 c. According to the preliminary allocation of
12 financial responsibility in the EPA Preliminary Finding, the
13 Parties shall finance the work deemed necessary by EPA to cause
14 the affected facility to perform as originally designed, as
15 follows.

16 (1) If EPA determines that the failure was
17 caused, in whole or in part, by a Design Defect in any of the
18 Upstream Facilities, Lockheed Martin shall, within ten (10) days
19 of receipt of the EPA Preliminary Finding, or within ten (10)
20 days of receipt of an itemized statement by the Settling Work
21 Defendant of all repairs or other work performed or to be
22 undertaken as a result of the alleged Design Defect, whichever is
23 later, remit to the Settling Work Defendant the cost of all such
24 work which Lockheed is required to finance pursuant to the
25 preliminary allocation of financial responsibility.

26 (2) If EPA determines that the failure was
27 caused, in whole or in part, by a Design Defect in the Blending

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1 Facility, the UAO Parties shall, within ten (10) days of receipt
2 of the EPA Preliminary Finding, or within ten (10) days of
3 receipt of an itemized statement by the Settling Work Defendant
4 of all repairs or other work performed or to be undertaken as a
5 result of the alleged Design Defect, whichever is later, remit to
6 the Settling Work Defendant the cost of all such work which the
7 UAO Parties are required to finance pursuant to the preliminary
8 allocation of financial responsibility. Among the UAO Parties,
9 the obligations of this Paragraph shall be joint and several.

10 (3) If EPA determines that the failure of
11 the affected facility was not caused, in whole or in part, by a
12 Design Defect in the Upstream Facilities or the Blending
13 Facility, the Settling Work Defendant and Lockheed Martin shall
14 finance such work as these parties are required to finance
15 pursuant to this Section, Paragraphs A-L.

16 (4) The Settling Work Defendant shall use
17 such funds as are remitted by Lockheed Martin or the UAO Parties
18 pursuant to the Preliminary Finding to pay for work necessary to
19 cause the facility with the alleged Design Defect to perform as
20 originally designed and for no other purpose.

21 (5) The Preliminary Finding may require a
22 party whose facility has been determined to have a Design Defect
23 to provide for advance or ongoing funding of any work necessary
24 to cause the affected facility to perform as originally designed.

25 (6) The Preliminary Finding also may require
26 the Settling Work Defendant to account for expenditures of funds
27 remitted to it under this Paragraph, and to reimburse any party

1 who has remitted such funds if the amount remitted exceeds the
2 expenditures necessary to perform the work necessary to cause the
3 affected facility to perform as originally designed.

4 (7) EPA shall have continuing jurisdiction
5 over the implementation of the Preliminary Determination.

6 d. Subject to EPA's approval, the Settling Work
7 Defendant shall perform such work as is necessary to cause the
8 affected facility to perform as originally designed. EPA may
9 require the Settling Work Defendant to submit a schedule and work
10 plan for such work within a specified period of time. Such
11 schedule(s) and work plan(s) shall be submitted, approved and
12 implemented in accordance with Section XII (Submissions Requiring
13 Agency Approval).

14 3. Not less than ninety (90) nor more than one hundred
15 and twenty (120) days after receipt of the Settling Work
16 Defendant's Notice of Design Defect, the EPA shall make a further
17 evaluation and issue a Further Determination based upon the
18 following procedure:

19 a. The Settling Work Defendant and any Settling
20 Defendants who receive a copy of a Notice of Design Defect
21 pursuant to Paragraph M.1.a.2 of this Section shall have sixty
22 (60) days from receipt of the statement to further inspect the
23 facilities and submit a written statement to EPA. Any such
24 Settling Defendant may request the opportunity to make an oral
25 presentation to the EPA by sending written notice of such intent
26 to EPA and other Settling Defendants who receive a copy of the
27 Notice of Design Defect. EPA shall set a reasonable date, time

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1 and location for the presentation. The EPA, in its discretion,
2 may require oral presentations from the affected Settling
3 Defendants.

4 b. If any party submits a written statement as
5 described in Paragraph M.3.a of this Section, EPA shall issue a
6 Further Determination. In the Further Determination, if any, EPA
7 shall determine whether or not a failure to perform as originally
8 designed occurred; whether the failure (if any) was due, in whole
9 or in part, to a Design Defect; the nature, extent and scope of
10 any repairs or other work required to cause the facility to
11 perform as originally designed; the reasonableness and necessity
12 of the costs incurred or to be incurred for such work; the
13 reasonableness, necessity and timeliness of steps taken to
14 address or mitigate damage claims; the comparative fault of any
15 other party, entity or person; and an allocation of financial
16 responsibility among the parties to this Consent Decree. EPA
17 shall provide written notice of its decision to the parties.

18 c. According to the allocation of financial
19 responsibility in the EPA Further Determination:

20 (1) If EPA determines that the failure was
21 caused, in whole or in part, by a Design Defect in any of the
22 Upstream Facilities, Lockheed Martin shall, within ten (10) days
23 of receipt of the EPA Further Determination, or within ten (10)
24 days of receipt of an itemized statement by the Settling Work
25 Defendant of all repairs or other work performed or to be
26 undertaken as a result of the alleged Design Defect, whichever is
27 later, 1) remit to the Settling Work Defendant the cost of all

1 such work which Lockheed Martin is required to finance by the
2 Further Determination, less any portion of such amounts
3 previously remitted to the Settling Work Defendant pursuant to
4 the Preliminary Finding, and 2) reimburse other Settling Work
5 Defendant(s) if required by the Further Determination.

6 (2) If EPA determines that the failure was
7 caused, in whole or in part, by a Design Defect in the Blending
8 Facility, the UAO Parties shall, within ten (10) days of receipt
9 of the EPA Further Determination, or within ten (10) days of
10 receipt of an itemized statement by the Settling Work Defendant
11 of all repairs or other work performed or to be undertaken as a
12 result of the alleged Design Defect, whichever is later, 1) remit
13 to the Settling Work Defendant the cost of all such work which
14 the UAO Parties are required to finance pursuant to the Further
15 Determination, less any portion of such amounts previously
16 remitted to the Settling Work Defendant pursuant to the
17 Preliminary Finding, and 2) reimburse other Settling Work
18 Defendant(s) if required by the Further Determination. Among the
19 UAO Parties, the obligations of this Paragraph shall be joint and
20 several.

21 (3) If EPA determines that the failure of
22 the affected facility was not caused, in whole or in part, by a
23 Design Defect, the Settling Work Defendant and Lockheed Martin
24 shall finance such work as these parties are required to finance
25 pursuant to this Section, Paragraphs A-L. If required by the
26 Further Determination, Settling Work Defendant shall reimburse
27 Lockheed Martin or the UAO Parties for amounts advanced pursuant

1 to the Preliminary Finding.

2 (4) The Settling Work Defendant shall use
3 such funds as are remitted by Lockheed Martin or the UAO Parties
4 pursuant to the Further Determination to pay for work necessary
5 to cause the facility with the alleged Design Defect to perform
6 as originally designed and for no other purpose.

7 (5) The Further Determination may require a
8 party whose facility has been determined to have a Design Defect
9 to provide for advance or ongoing funding of any work necessary
10 to cause the affected facility to perform as originally designed.

11 (6) The Further Determination shall require
12 the Settling Work Defendant to account for expenditures of funds
13 remitted to it under this Paragraph M, and to reimburse any
14 party who has remitted such funds if the amount remitted exceeds
15 the expenditures necessary to perform the work necessary to cause
16 the affected facility to perform as originally designed. The
17 Further Determination also shall require that the Settling Work
18 Defendant make any such reimbursement within a reasonable,
19 specified period of time.

20 (7) EPA shall have continuing jurisdiction
21 over the Further Determination.

22 4. If a dispute exists among any of the Settling
23 Defendants as to the EPA Further Determination, the Parties'
24 participation in or satisfaction of the terms or conditions set
25 forth in the EPA Preliminary Finding or Further Determination
26 shall not act as a waiver of any claims or defenses by any party,
27 and the Parties may proceed to seek judicial review of such a

1 dispute as follows:

2 a. The Settling Work Defendant, Lockheed Martin
3 or the UAO Parties may seek a final resolution of the dispute
4 between or among them concerning the EPA Further Determination by
5 filing suit against one another in a court of competent
6 jurisdiction. Nothing in this Section shall be construed to
7 provide any party with a claim or cause of action against the
8 United States or the State.

9 b. The court shall determine all issues regarding
10 the dispute among the Settling Work Defendant, Lockheed Martin,
11 and/or the UAO Parties concerning the EPA Further Determination
12 de novo. Discovery and evidence as to such dispute(s) shall not
13 be limited to the Administrative Record, except that nothing in
14 this Paragraph shall be construed to affect the restrictions on
15 judicial review set forth in CERCLA section 113 (j) and (k), 42
16 U.S.C. § 9613(j)-(k) or California Health & Safety Code section
17 ____.

18 c. Upon the entry of a final judgment by the
19 court or upon final resolution of the dispute as agreed upon by
20 the parties, if the court's determination and allocation or the
21 parties' final resolution differs from that set forth in the
22 EPA's Further Determination, then each party shall be reimbursed
23 or the responsible party shall pay another party's previous
24 allocation so that each party's final share of total costs shall
25 correspond to the court's judgment or the parties' final
26 resolution. Any such reimbursement shall include pre-judgment
27 interest pursuant to California Code of Civil Procedure section

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_____, unless otherwise agreed by the parties. The court's final judgment or the parties' final resolution shall supersede EPA's Further Determination. Should additional costs be incurred relating to the Design Defect(s) at issue after the court's final judgment or the parties' final resolution, the court's final judgment or the parties' final resolution shall be followed by the parties and EPA.

N. Funding of Repairs Required by Force Majeure Events.

1. As used in this Paragraph: "major" damage is damage which will require expenditure of more than five per cent (5%) of the net present value of the capital improvement portion [to be calculated based on agreed discount and inflation rates, and subject to EPA approval] of either the Upstream Facilities, the Blending Facility, or the other Downstream Facilities to repair or rebuild; "minor" damage is damage which will require expenditure of five per cent (5%) or less of the net present value of capital improvement portion of the affected facility to repair or rebuild.

2. In the event of a force majeure event (as is defined in Section XIX (Force Majeure)) which causes major damage to any of the Upstream Facilities or Blending Facility, EPA reserves its rights against Settling Defendants pursuant to Section XXII (Covenants Not to Sue by Plaintiffs), Paragraph B. In the event of a force majeure event which causes minor damage to the Upstream Facilities or the Blending Facility, Lockheed Martin shall fund the repair and/or rebuilding of the affected facility up to and including five per cent (5%) of the net

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present value of the Upstream Facilities or Blending Facility, whichever is affected, unless EPA exercises its rights under Section XX (Covenants Not to Sue by Plaintiffs), Paragraph B.

3. In the event of a force majeure event (as is defined in Section XIX (Force Majeure)) which causes major or minor damage to the Downstream Facilities other than the Blending Facility, the City of Burbank shall fund the repair and/or rebuilding of such facilities unless EPA exercises its rights under Section XXII (Covenants Not to Sue by Plaintiffs), Paragraph B.

XV. CERTIFICATION OF COMPLETION

A. Completion of the O&M Activities.

1. At least ninety (90) days prior to the date that Settling Work Defendant anticipates that the Work will have been fully performed, Settling Work Defendant shall submit a written report requesting certification to EPA for approval, with a copy to the State, pursuant to Section XII (Submissions Requiring Agency Approval). If any party other than the Settling Work Defendant is required to dismantle or decommission any facility constructed pursuant to the First Consent Decree, this Consent Decree, or UAO 92-12, that party also may submit a written report requesting certification to EPA for approval, with a copy to the State, pursuant to Section XII (Submissions Requiring Agency Approval). In the report, a registered professional engineer and the Settling Work Defendant's Project Coordinator shall state that the O&M Activities will be complete in full satisfaction of the requirements of this Consent Decree. The written report

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1 shall include all appropriate and necessary information to a
2 determination of completion, including the date upon which
3 completion is anticipated, and if appropriate drawings signed and
4 stamped by a professional engineer. The report shall contain the
5 following statement, signed by the Settling Work Defendant's
6 authorized Project Coordinator:

7 "To the best of my knowledge, after thorough
8 investigation, I certify that the information contained
9 in or accompanying this submission is true, accurate
10 and complete. I am aware that there are significant
penalties for submitting false information, including
the possibility of fine and imprisonment for knowing
violations."

11 2. If EPA deems necessary, EPA may conduct a pre-
12 certification inspection. If, after review of the written report
13 and conducting a pre-certification inspection, EPA deems such an
14 inspection necessary, EPA, after reasonable opportunity to review
15 and comment by the State, determines that the O&M Activities or
16 any portion thereof will not be completed in accordance with this
17 Consent Decree on the date anticipated by Settling Work
18 Defendant, EPA will notify the Settling Work Defendant in writing
19 of the activities that must be undertaken to complete the O&M
20 Activities.

21 3. EPA will set forth in the notice a schedule for
22 performance of such activities consistent with this Consent
23 Decree and the O&M Second Stage Work Plan or require the Settling
24 Work Defendant to submit a schedule to EPA for approval pursuant
25 to Section XII (Submissions Requiring Agency Approval). Settling
26 Work Defendant shall perform all activities described in the
27 notice in accordance with the specifications and schedules

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1 established pursuant to this Paragraph, subject to its right to
2 invoke the dispute resolution procedures set forth in Section XX
3 (Dispute Resolution).

4 4. If EPA concludes, based on the initial or any
5 subsequent report requesting Certification of Completion and
6 after a reasonable opportunity for review and comment by the
7 State, that the O&M Activities have been fully performed in
8 accordance with this Consent Decree, EPA will so certify in
9 writing to all Settling Defendants. This certification shall
10 constitute the Certification of Completion of the O&M Activities
11 for purposes of this Consent Decree, including, but not limited
12 to, Section XXII (Covenants Not to Sue by Plaintiffs).
13 Certification of Completion of the O&M Activities shall not
14 affect Settling Work Defendant's other obligations under this
15 Consent Decree, including, but not limited to, any obligation to
16 dismantle or decommission the treatment and blending facilities.

17 XVI. EMERGENCY RESPONSE

18 In the event of any action or occurrence during the
19 performance of the O&M Activities which causes or threatens a
20 release of Waste Material from the Site that constitutes an
21 emergency situation or may present an immediate threat to public
22 health or welfare or the environment, Settling Work Defendant
23 shall, subject to this Section, immediately take all appropriate
24 action to prevent, abate, or minimize such release or threat of
25 release. Settling Work Defendant shall report such a situation
26 to the appropriate regulatory authorities as required by law. As
27 soon as possible and reasonable under the circumstances, but in

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no event more than one working day after making the report required by law, Settling Work Defendant shall notify EPA's Project Coordinator, or if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these individuals is available, Settling Work Defendant shall notify the Emergency Response Unit, EPA, Region IX. Settling Work Defendant shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the Second Stage SOW or the O&M Second Stage Work Plan. In the event that Settling Work Defendant fails to take appropriate response action as required by this Section, and EPA or, as appropriate, the State takes such action instead, Settling Work Defendant shall reimburse EPA and the State all costs of the response action not inconsistent with the NCP pursuant to Section XVII (Reimbursement of Response Costs).

Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States, or the State to take, direct, or order all appropriate action or to seek an order from the Court to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site.

XVII. REIMBURSEMENT OF RESPONSE COSTS

A. Within sixty (60) days of the Effective Date of this
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1 Consent Decree as defined in Section XXVIII (Effective Date),
2 Lockheed Martin shall:

3 1. Pay to the United States \$ 11,827,869 in the form
4 of an EFT to the U.S. Department of Justice Lockbox referencing
5 the San Fernando Valley Superfund Site/Burbank Operable Unit, and
6 referencing CERCLA Number SSID #59, DOJ Case Number 90-11-2-442
7 and USAO File No. 91-03-463 in reimbursement of Past Basin-wide
8 Response Costs.

9 2. Lockheed Martin shall provide written verification
10 to EPA regarding EFT transfers pursuant to this Section as
11 specified in Section XXVII (Notices and Submissions).

12 3. Pay to the State \$ 22,348.60 in reimbursement of
13 Past Basin-wide Response Costs incurred by the State and
14 \$ 25,264.14 in reimbursement of Past Site-Specific Response Costs
15 incurred by the State in the form of a certified check or checks
16 made payable to the State of California, Department of Toxic
17 Substances Control, Project No. 300173. The Settling Defendants
18 shall send the certified check(s) to Department of Toxic
19 Substances Control, 400 P Street, 4th floor, Sacramento,
20 California, 95814.

21 B. Lockheed Martin shall reimburse the United States and
22 the State for all Future Site-Specific Response Costs not
23 inconsistent with the National Contingency Plan incurred by the
24 United States and the State. The United States and the State
25 will send Lockheed Martin bills requiring payment which include
26 direct and indirect costs incurred by EPA, DOJ, the State and
27 their contractors no more frequently than annually; provided,

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1 however, that failure to include all such costs in the submittal
2 during any calendar year will not preclude EPA from submitting
3 such costs in any subsequent year. EPA's Agency Financial
4 Management System Summary Data (SCORES) Report or equivalent
5 shall constitute documentation of EPA's costs. Lockheed Martin
6 shall make payment within sixty (60) days of the date of each
7 bill requiring payment, except as otherwise provided in Section
8 XVII, Paragraphs D and F. Lockheed Martin shall make all
9 payments required by this Paragraph in the following manner: **[EPA**
10 **will provide language establishing a site-specific account for**
11 **receipt of these amounts]**. Lockheed Martin shall transmit such
12 amounts in the form of a EFT to the U.S. Department of Justice
13 Lockbox referencing the San Fernando Valley Superfund
14 Site/Burbank Operable Unit, and referencing CERCLA Number SSID #
15 L6, DOJ Case Number 90-11-2-442 and USAO File No. 91-03-463.

16 C. Lockheed Martin may contest a bill for Future Site-
17 Specific Response Costs under Section XVII, Paragraph C if it
18 determines that the United States or the State has made an
19 accounting error or if it alleges that a cost item that is
20 included represents costs that are inconsistent with the NCP.
21 Such objection shall be made in writing within sixty (60) days of
22 receipt of the bill and must be sent to the United States (if the
23 United States' accounting is being disputed) or the State (if the
24 State's accounting is being disputed) pursuant to Section XXVII
25 (Notices and Submissions). Any such objection shall specifically
26 identify the contested Future Site-Specific Response Costs and
27 the basis for objection. In the event of such an objection,

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1 Lockheed Martin shall within the sixty (60) day period pay all
2 uncontested Future Site-Specific Response Costs to the United
3 States or the State in the manner described in Section XVII,
4 Paragraph B. Simultaneously, Lockheed Martin shall establish an
5 interest-bearing escrow account in a Federally-insured bank duly
6 chartered in the State of California and remit to that escrow
7 account funds equivalent to the amount of the contested Future
8 Site-Specific Response Costs. Lockheed Martin shall send to the
9 United States, as provided in Section XXVII (Notices and
10 Submissions), and the State a copy of the transmittal letter and
11 check paying the uncontested Future ~~Site-Specific~~ Response Costs,
12 and a copy of the correspondence that establishes and funds the
13 escrow account, including, but not limited to, information
14 containing the identity of the bank and bank account under which
15 the escrow account is established as well as a bank statement
16 showing the initial balance of the escrow account.

17 Simultaneously with establishment of the escrow account, within
18 the sixty (60) day period, Lockheed Martin shall initiate the
19 Dispute Resolution procedures in Section XX (Dispute Resolution).

20 If the United States or the State prevails in the dispute or
21 concerning any aspect of the contested costs in dispute, within
22 five (5) days of the resolution of the dispute, Lockheed Martin
23 shall pay the sums due (with accrued Interest) to the United
24 States or the State, if State costs are disputed, in the manner
25 described in this Section, Paragraph B. If Lockheed Martin
26 prevails concerning any aspect of the contested costs, Lockheed
27 Martin shall pay that portion of the costs (plus associated

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1 accrued Interest) as to which it did not prevail to the United
2 States or the State, if State costs are disputed in the manner
3 described in this Section, Paragraph B; Lockheed Martin shall be
4 disbursed any balance of the escrow account. The dispute
5 resolution procedures set forth in this Paragraph in conjunction
6 with the procedures set forth in Section XX (Dispute Resolution)
7 shall be the exclusive mechanisms for resolving disputes
8 regarding Lockheed Martin's obligation to reimburse the United
9 States and the State for their Future Site-Specific Response
10 Costs, including without limitation allegations of accounting
11 errors or allegations that costs billed are inconsistent with the
12 NCP.

13 D. In the event that any payment required by this Section,
14 Paragraph A.1 is not made within sixty (60) days of the Effective
15 Date of this Consent Decree (as defined by Section XXVIII),
16 Lockheed Martin shall pay Interest on the unpaid balance. The
17 Interest to be paid shall begin to accrue sixty (60) days after
18 the Effective Date of this Consent Decree. Interest shall accrue
19 at the rate specified through the date of ~~Lockheed Martin's the~~
20 ~~Settling Cash Defendant's~~ payment. Payments of Interest made
21 under this Paragraph shall be in addition to such other remedies
22 or sanctions available to Plaintiffs by virtue of a failure to
23 make timely payments under this Section.

24 XVIII. INDEMNIFICATION AND INSURANCE

25 The United States and the State do not assume any liability
26 by entering into this Consent Decree or by virtue of any
27 designation of Settling Work Defendant as EPA's authorized

1 accrued Interest) as to which it did not prevail to the United
2 States or the State, if State costs are disputed in the manner
3 described in this Section, Paragraph B; Lockheed Martin shall be
4 disbursed any balance of the escrow account. The dispute
5 resolution procedures set forth in this Paragraph in conjunction
6 with the procedures set forth in Section XX (Dispute Resolution)
7 shall be the exclusive mechanisms for resolving disputes
8 regarding Lockheed Martin's obligation to reimburse the United
9 States and the State for their Future Site-Specific Response
10 Costs, including without limitation allegations of accounting
11 errors or allegations that costs billed are inconsistent with the
12 NCP.

13 D. In the event that any payment required by this Section,
14 Paragraph A.1 is not made within sixty (60) days of the Effective
15 Date of this Consent Decree (as defined by Section XXVIII),
16 Lockheed Martin shall pay Interest on the unpaid balance. The
17 Interest to be paid shall begin to accrue sixty (60) days after
18 the Effective Date of this Consent Decree. Interest shall accrue
19 at the rate specified through the date of ~~Lockheed Martin's the~~
20 ~~Settling Cash Defendant's~~ payment. Payments of Interest made
21 under this Paragraph shall be in addition to such other remedies
22 or sanctions available to Plaintiffs by virtue of a failure to
23 make timely payments under this Section.

24 XVIII. INDEMNIFICATION AND INSURANCE

25 The United States and the State do not assume any liability
26 by entering into this Consent Decree or by virtue of any
27 designation of Settling Work Defendant as EPA's authorized

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1 representative under Section 104(e) of CERCLA, 42 U.S.C. §
2 9604(e). Settling Work Defendant, with respect to response
3 activities performed by Settling Work Defendant, and other
4 Settling Work defendants with respect to response activities
5 performed by them, ~~if any,~~ shall indemnify, save and hold
6 harmless the United States, the State and their officials,
7 agents, employees, contractors, subcontractors, or
8 representatives for or from any and all claims or causes of
9 action arising from, or on account of, acts or omissions of such
10 Settling Defendant, its officers, employees, agents, contractors,
11 subcontractors, and any persons acting on its behalf or under its
12 control, in carrying out activities pursuant to this Consent
13 Decree, including, but not limited to, any claims arising from
14 the designation of Settling Work Defendant or any other Settling
15 Defendant as EPA's authorized representative under Section 104(e)
16 of CERCLA, 42 U.S.C. § 9604(e). Further, such Settling Defendant
17 agrees to pay the United States and the State all costs they
18 incur including, but not limited to, attorneys fees and other
19 expenses of litigation and settlement arising from, or on account
20 of, claims made against the United States or the State based on
21 acts or omissions of such Settling Defendant, its officers,
22 employees, agents, contractors, subcontractors, and any persons
23 acting on its behalf or under its control, in carrying out
24 activities pursuant to this Consent Decree. Neither the United
25 States nor the State shall be held out as a party to any contract
26 entered into by or on behalf of such Settling Defendant in
27 carrying out activities pursuant to this Consent Decree. Neither

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1 such Settling Defendant nor any such contractor shall be
2 considered an agent of the United States or the State.

3 A. Settling Defendants waive all claims against the United
4 States and the State for damages or reimbursement or for set-off
5 of any payments made or to be made to the United States or the
6 State arising from or on account of any contract, agreement, or
7 arrangement between such Settling Defendants and any person for
8 performance of O&M Activities on or relating to the Site,
9 including, but not limited to, claims on account of construction
10 delays. In addition, such Settling Defendant shall indemnify and
11 hold harmless the United States and the State with respect to any
12 and all such claims for damages or reimbursement arising from or
13 on account of any contract, agreement, or arrangement between any
14 one or more of Settling Defendants and any person for performance
15 of O&M Activities on or relating to the Site, including, but not
16 limited to, claims on account of construction delays.

17 B. No later than thirty (30) days prior to the Date of
18 Commencement, Settling Work Defendant shall secure, and shall
19 maintain until the first anniversary of EPA's Certification of
20 Completion of the Remedial Action pursuant Paragraph A.2 of
21 Section XV (Certification of Completion), comprehensive general
22 liability insurance with limits of \$ _____ million dollars,
23 combined single limit naming as additional insured the United
24 States and the State. In addition, for the duration of this
25 Consent Decree, Settling Work Defendant shall satisfy, or shall
26 ensure that its contractors or subcontractors satisfy, all
27 applicable laws and regulations regarding the provision of

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1 worker's compensation insurance for all persons performing the
2 O&M Activities on behalf of Settling Work Defendant in
3 furtherance of this Consent Decree. Prior to commencement of the
4 O&M Activities under this Consent Decree, Settling Work Defendant
5 shall provide to EPA and the State certificates of such insurance
6 and a copy of each insurance policy. Settling Work Defendant
7 shall resubmit such certificates and copies of policies each year
8 on the anniversary of the Date of Commencement. If Settling Work
9 Defendant demonstrates by evidence satisfactory to EPA and the
10 State that its contractor or subcontractor maintains insurance
11 equivalent to that described above, or insurance covering the
12 same risks but in a lesser amount, then, with respect to that
13 contractor or subcontractor, Settling Work Defendant need provide
14 only that portion of the insurance described above which is not
15 maintained by the contractor or subcontractor. If Settling Work
16 Defendant fails to submit proof of insurance as described in this
17 Paragraph, and no other Settling Defendant submits such proof,
18 EPA shall have the right to take over all of the work required by
19 this Consent Decree with respect to the Upstream Facilities, and
20 the City of Burbank shall continue to fund and perform all of the
21 work required by this Consent Decree with respect to the
22 Downstream Facilities. If EPA takes over such the work required
23 by this Consent Decree with respect to the Upstream Facilities
24 pursuant to this Section and Paragraph, Lockheed Martin shall
25 fund EPA's performance of such work pursuant to Section XIV
26 (Funding of Response Activities), Paragraph H.2.a-c of this
27 Consent Decree. If EPA takes over such work pursuant to this

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1 Section and Paragraph, the City of Burbank shall not be required
2 to reimburse Lockheed Martin for any portion of the costs
3 incurred by EPA to take over and/or to perform such work.

4 C. If Settling Work Defendant obtains insurance as
5 described in this paragraph, and such insurance is subsequently
6 cancelled, Settling Work Defendant shall so notify EPA within ten
7 (10) days of Settling Work Defendant's receipt of notice that
8 such insurance had been cancelled. Furthermore, in the event of
9 such cancellation, equivalent insurance for the O&M Activities
10 shall be obtained as soon as reasonably practicable, and proof of
11 such insurance shall be submitted by Settling Work Defendant to
12 EPA within ten (10) days of such insurance being obtained.
13 Delays in the O&M Activities or EPA's decision to take over the
14 work due to the failure to obtain or submit proof of insurance
15 shall not constitute a force majeure event under this Consent
16 Decree.

17 D. In its bid documents, Settling Work Defendant shall
18 require that all contractors submitting bids to become O&M
19 Contractor agree to provide comprehensive general liability
20 insurance in the amount specified in paragraph C of this Section.
21 Settling Work Defendant shall condition awarding the bid for O&M
22 Contractor upon a contractor's ability to provide the
23 comprehensive general liability insurance specified in paragraph
24 C of this Section. The contract entered into between the
25 Settling Work Defendant and the O&M Contractor shall require the
26 O&M Contractor to provide worker's compensation insurance in
27 compliance with all applicable laws and regulations and

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1 comprehensive general liability insurance as specified in
2 paragraph C of this Section. Settling Work Defendant's
3 compliance with this Paragraph shall constitute compliance with
4 its obligation in Paragraph C of this Section to secure and
5 retain insurance, provided the O&M Contractor complies with its
6 obligations to provide the comprehensive general liability
7 insurance specified in Paragraph C of this Section.

8 E. In addition to the insurance required by this Section,
9 Lockheed Martin, the Settling Work Defendant, and the Settling
10 Cash Defendants have agreed among themselves that the Upstream
11 Facilities and Blending Facility shall be insured by additional
12 coverage as set forth in Exhibit 3 to this Consent Decree.

13 XIX. FORCE MAJEURE

14 A. "Force majeure," for purposes of this Consent Decree, is
15 defined as any event arising from causes beyond the control of a
16 Settling Defendant or of any entity controlled by such Settling
17 Defendant, including, but not limited to, its contractors and
18 subcontractors, that delays or prevents the performance of any
19 obligation under this Consent Decree despite such Settling
20 Defendant's best efforts to fulfill the obligation. The
21 requirement that the Settling Defendant exercise "best efforts to
22 fulfill the obligation" includes using best efforts to anticipate
23 any potential force majeure event and best efforts to address the
24 effects of any potential force majeure event (1) as it is
25 occurring and (2) following the potential force majeure event,
26 such that the delay is minimized to the greatest extent possible.
27 "Force majeure" does not include financial inability to complete

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1 the O&M Activities or a failure to attain the Performance
2 Standards.

3 B. If any event occurs or has occurred that may delay the
4 performance of any O&M Activities under this Consent Decree, or
5 any other response activities performed under this Consent
6 Decree, whether or not caused by a force majeure event, the
7 Settling Defendant responsible for performing the activities
8 shall notify orally EPA's Project Coordinator or, in his or her
9 absence, EPA's Alternate Project Coordinator or, in the event
10 both of EPA's designated representatives are unavailable, the
11 Director of the Hazardous Waste Management Division, EPA Region
12 IX, as soon as possible under the circumstances. It shall be
13 presumed that notice not made within two (2) working days of when
14 such Settling Defendant first knew or should have known that the
15 event might cause a delay is untimely unless evidence credible to
16 EPA and to the contrary is provided to EPA by the Settling Work
17 Defendant. Within ten (10) days thereafter, such Settling
18 Defendant shall provide in writing to EPA and the State an
19 explanation and description of the reasons for the delay; the
20 anticipated duration of the delay; all actions taken or to be
21 taken to prevent or minimize the delay; a schedule for
22 implementation of any measures to be taken to prevent or mitigate
23 the delay or the effect of the delay; the Settling Defendant's
24 rationale for attributing such delay to a force majeure event if
25 it intends to assert such a claim; and a statement as to whether,
26 in the opinion of the Settling Defendant, such event may cause or
27 contribute to an endangerment to public health, welfare or the

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1 environment. The Settling Defendant shall include with any
2 notice all available documentation supporting its claim that the
3 delay was attributable to a force majeure. Unless the force
4 majeure event is a natural catastrophe or similar event which
5 inherently justifies departure from the above requirements,
6 failure to comply with the above requirements shall preclude
7 Settling Defendant from asserting any claim of force majeure for
8 that event. A Settling Defendant shall be deemed to have notice
9 of any circumstance of which its contractors or subcontractors
10 had or should have had notice.

11 C. If EPA, after a reasonable opportunity for review and
12 comment by the State, agrees that the delay or anticipated delay
13 is attributable to a force majeure event, the time for
14 performance of the obligations under this Consent Decree that are
15 affected by the force majeure event will be extended by EPA,
16 after a reasonable opportunity for review and comment by the
17 State, for such time as is necessary to complete those
18 obligations. An extension of the time for performance of the
19 obligations affected by the force majeure event shall not, of
20 itself, extend the time for performance of any other obligation.
21 If EPA, after a reasonable opportunity for review and comment by
22 the State, does not agree that the delay or anticipated delay has
23 been or will be caused by a force majeure event, EPA will notify
24 the Settling Defendant claiming force majeure in writing of its
25 decision. If EPA, after a reasonable opportunity for review and
26 comment by the State, agrees that the delay is attributable to a
27 force majeure event, EPA will notify the Settling Defendant

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1 claiming force majeure in writing of the length of the extension,
2 if any, for performance of the obligations affected by the force
3 majeure event. Notification to EPA of any other claimed force
4 majeure event affecting other obligations of parties to this
5 consent decree shall be made by the party claiming force majeure
6 in writing to EPA within five ~~(5)~~ working days of when such party
7 knew or should have known that the event might cause a delay in
8 such party's obligations. It shall be presumed that notice not
9 made within such time is untimely unless evidence credible to EPA
10 and to the contrary is provided to EPA by such party.

11 D. If the Settling Defendant claiming force majeure elects
12 to invoke the dispute resolution procedures set forth in Section
13 XX (Dispute Resolution), it shall do so no later than fifteen
14 (15) days after receipt of EPA's notice. In any such proceeding,
15 the Settling Defendant shall have the burden of demonstrating by
16 a preponderance of the evidence that the delay or anticipated
17 delay has been or will be caused by a force majeure event, that
18 the duration of the delay or the extension sought was or will be
19 warranted under the circumstances, that best efforts were
20 exercised to avoid and mitigate the effects of the delay, and
21 that the Settling Defendant complied with the requirements of
22 this Section, Paragraphs A and B, above or was excused from such
23 compliance under the terms of this Decree. If the Settling
24 Defendant carries this burden, the delay at issue shall be deemed
25 not to be a violation by such Settling Defendant of the affected
26 obligation of this Consent Decree identified to EPA and the
27 Court.

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1 XX. DISPUTE RESOLUTION

2 A. Unless otherwise expressly provided for in this Consent
3 Decree, the dispute resolution procedures of this Section shall
4 be the exclusive mechanism to resolve disputes arising under or
5 with respect to this Consent Decree. However, the procedures set
6 forth in this Section shall not apply to actions by the United
7 States to enforce obligations of a Settling Defendant that have
8 not been disputed in accordance with this Section.

9 B. Any dispute which arises under or with respect to this
10 Consent Decree shall in the first instance be the subject of
11 informal negotiations between the parties to the dispute. The
12 period for informal negotiations shall not exceed twenty (20)
13 days from the time the dispute arises, unless it is modified by
14 written agreement of the parties to the dispute. The dispute
15 shall be considered to have arisen when one party sends the other
16 party a written Notice of Dispute.

17 C. In the event that the parties cannot resolve a dispute
18 by informal negotiations under the preceding Paragraph, then the
19 position advanced by EPA shall be considered binding unless,
20 within ten (10) days after the conclusion of the informal
21 negotiation period, the Settling Defendant asserting that there
22 is a dispute invokes the formal dispute resolution procedures of
23 this Section by serving on the United States a written Statement
24 of Position on the matter in dispute, including, but not limited
25 to, any factual data, analysis or opinion supporting that
26 position and any supporting documentation relied upon by such
27 Settling Defendant. The Statement of Position shall specify the

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1 Settling Defendant's position as to whether formal dispute
2 resolution should proceed under this Section XX, Paragraphs F or
3 G.

4 D. Within fourteen (14) days after receipt of the Settling
5 Defendant's Statement of Position, EPA will serve on such
6 Settling Defendant its Statement of Position, including, but not
7 limited to, any factual data, analysis, or opinion supporting
8 that position and all supporting documentation relied upon by
9 EPA. EPA's Statement of Position shall include a statement as to
10 whether formal dispute resolution should proceed under this
11 Section XX, Paragraph F or G.

12 E. If there is disagreement between EPA and a Settling
13 Defendant asserting there is a dispute as to whether dispute
14 resolution should proceed under Section XX, Paragraph F or G, the
15 parties to the dispute shall follow the procedures set forth in
16 the Paragraph determined by EPA to be applicable. However, if
17 the Settling Defendant ultimately appeals to the Court to resolve
18 the dispute, the Court shall determine which Paragraph is
19 applicable in accordance with the standards of applicability set
20 forth in Section XX, Paragraphs F and G.

21 F. Formal dispute resolution for disputes pertaining to the
22 selection or adequacy of any response action and all other
23 disputes that are accorded review on the Administrative Record
24 under applicable principles of administrative law shall be
25 conducted pursuant to the procedures set forth in this Paragraph.
26 For purposes of this Paragraph, the adequacy of any response
27 action includes, without limitation: (1) the adequacy or

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1 appropriateness of plans, procedures to implement plans, or any
2 other items requiring approval by EPA under this Consent Decree;
3 and (2) the adequacy of the performance of response actions taken
4 pursuant to this Consent Decree. Nothing in this Consent Decree
5 shall be construed to allow any dispute by Settling Defendants
6 regarding the validity of the ROD's provisions.

7 1. An Administrative Record of the dispute shall be
8 maintained by EPA and shall contain all Statements of Position,
9 including supporting documentation, submitted pursuant to this
10 Paragraph. Where appropriate, EPA may allow submission of
11 supplemental Statements of Position by the parties to the
12 dispute.

13 2. The Director of the Waste Management Division, EPA
14 Region IX, will issue a final administrative decision resolving
15 the dispute based on the administrative record described in
16 Section XX, Paragraph F.1. This decision shall be binding upon
17 the Settling Defendant asserting that there is a dispute, subject
18 only to the right to seek judicial review pursuant to Section XX,
19 Paragraphs F.3 and F.4.

20 3. Any administrative decision made by EPA pursuant to
21 this Section, Paragraph F.2 shall be reviewable by this Court,
22 provided that a notice of judicial appeal is filed by the
23 Settling Defendant with the Court and served on all parties
24 within thirty (30) days of receipt of EPA's decision. The notice
25 of judicial appeal shall include a description of the matter in
26 dispute, the efforts made by the parties to resolve it, the
27 relief requested, and the schedule, if any, within which the

1 dispute must be resolved to ensure orderly implementation of this
2 Consent Decree. The United States may file a response to the
3 Settling Defendant's notice of judicial appeal.

4 4. In proceedings on any dispute governed by this
5 Paragraph, the Settling Defendant asserting that there is a
6 dispute shall have the burden of demonstrating that the decision
7 of the Waste Management Division Director is arbitrary and
8 capricious or otherwise not in accordance with law. Judicial
9 review of EPA's decision shall be on the Administrative Record
10 compiled pursuant to this Section, Paragraph F.1.

11 G. Formal dispute resolution for disputes that neither
12 pertain to the selection or adequacy of any response action nor
13 are otherwise accorded review on the Administrative Record under
14 applicable principles of administrative law, shall be governed by
15 this Paragraph.

16 1. Following receipt of the Settling Defendant's
17 Statement of Position submitted pursuant to Section XX, Paragraph
18 C, the Director of the Waste Management Division, EPA Region IX,
19 will issue a final written decision resolving the dispute. The
20 Waste Management Division Director's decision shall be binding on
21 the Settling Defendant asserting that there is a dispute unless,
22 within thirty (30) days of receipt of the decision, such Settling
23 Defendant files with the Court and serves on the other party or
24 parties a notice of judicial appeal setting forth the matter in
25 dispute, the efforts made by the parties to resolve it, the
26 relief requested, and the schedule, if any, within which the
27 dispute must be resolved to ensure orderly implementation of the

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1 Consent Decree. The United States may file a response to
2 Settling Defendant's notice of judicial appeal.

3 2. Notwithstanding Paragraph R of Section I
4 (Background) of this Consent Decree, judicial review of any
5 dispute governed by this Paragraph shall be governed by
6 applicable provisions of law.

7 H. The invocation of formal dispute resolution procedures
8 under this Section shall not extend, postpone or affect in any
9 way any obligation not directly in dispute of the Settling
10 Defendant asserting that there is a dispute under this Consent
11 Decree, unless EPA or the Court agrees otherwise. If a Settling
12 Defendant prevails, the deadlines for any requirements which it
13 could not practicably meet because of the dispute resolution
14 proceedings shall be extended to account for any delays because
15 of such proceedings. Stipulated penalties with respect to the
16 disputed matter shall continue to accrue but payment shall be
17 stayed pending resolution of the dispute as provided in Section
18 XXI (Stipulated Penalties), Paragraph L. Notwithstanding the
19 stay of payment, stipulated penalties shall accrue from the first
20 day of noncompliance with any applicable provision of this
21 Consent Decree. In the event that the Settling Defendant does
22 not prevail on the disputed issue, stipulated penalties shall be
23 assessed and paid as provided in Section XXI (Stipulated
24 Penalties), unless EPA in its discretion elects not to assess
25 some or all of such penalties.

26 XXI. STIPULATED PENALTIES

27 Unless excused by EPA or a force majeure event, a Settling

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1 Defendant shall be liable for stipulated penalties to the United
2 States, as set forth in this Section, for each failure by such
3 Settling Defendant to comply with the requirements of this
4 Consent Decree. "Compliance" by the Settling Work Defendant
5 shall include completion of the O&M activities under this Consent
6 Decree or any work plan or deliverable approved under this
7 Consent Decree or incorporated by this Consent Decree in
8 accordance with all applicable requirements of law, this Consent
9 Decree, the O&M Second Stage Work Plan and any plans or other
10 documents approved by EPA pursuant to this Consent Decree or any
11 such work plan or deliverable, and within the specified time
12 schedules established by and approved under this Consent Decree
13 or any such work plan or deliverable.

14 A. Unless expressly stated otherwise in this Consent
15 Decree, any reports, plans, specifications, schedules,
16 deliverables, appendices, and attachments required by this
17 Consent Decree, or implemented in whole or in part by this
18 Consent Decree, are, upon approval by EPA, incorporated into this
19 Decree. A failure by the Settling Work Defendant to comply with
20 applicable EPA-approved reports, plans, specifications,
21 schedules, deliverables, appendices or attachments shall be
22 considered a failure to comply with this Consent Decree and shall
23 subject such Settling Work Defendant to stipulated penalties as
24 provided in Paragraphs D through H of this Section.

25 B. Failure to comply with this Consent Decree shall also
26 include but is not limited to the following:

- 27 1. Failure by the Settling Work Defendant to submit

1 deliverables specified in this Consent Decree in an acceptable
2 manner and by the date due pursuant to this Consent Decree;
3 provided, however, that if the failure to comply results from a
4 determination by EPA that a written deliverable is inadequate,
5 the Settling Work Defendant shall have ten (10) working days from
6 receipt of EPA's written notice of disapproval, or such other
7 longer time period as provided by EPA in the notice of
8 disapproval, within which to correct the inadequacy and resubmit
9 the deliverable for approval. Any disapproval by EPA shall
10 include an explanation of why the deliverable is inadequate. If
11 the resubmitted deliverable is inadequate, the Settling Work
12 Defendant shall be deemed to be in violation of this Consent
13 Decree.

14 2. Failure by Settling Work Defendant to use best
15 efforts to obtain any permits necessary for offsite work which
16 Settling Work Defendants is required to perform or failure by
17 Settling Work Defendant to use best reasonable efforts to obtain
18 necessary access agreements.

19 3. Failure by Settling Work Defendant to comply with
20 any permit obtained for the purpose of implementing the
21 requirements of this Consent Decree in any offsite location.

22 C. Stipulated penalties for failure to perform any require-
23 ment of this Consent Decree for which a deadline is specified
24 shall begin to accrue on the first day after the deadline.

25 Stipulated penalties for any other violation of this Consent
26 Decree shall begin to accrue on the first day after a Settling
27 Defendant subject to penalties receives notice from EPA of such

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1 violation. For any violation, stipulated penalties shall
2 continue to accrue up to and including the day on which the non-
3 compliance is corrected. EPA, in its sole discretion, may waive
4 or reduce stipulated penalties. If EPA does not waive stipulated
5 penalties, EPA shall provide the Settling Defendant subject to
6 penalties with written notice of the alleged deficiency in
7 compliance with this Consent Decree, and accrued stipulated
8 penalties shall become payable thirty (30) days after such
9 Settling Defendant's receipt of EPA's written notice of
10 deficiency; provided, however, that if EPA provides notice of an
11 alleged deficiency, and that deficiency continues, EPA shall not
12 be required to provide any additional notice in order for
13 stipulated penalties to continue to accrue and become payable.

14 D. Stipulated penalties shall accrue in the following
15 amounts, and a Settling ~~Work~~-Defendant¹ subject to such penalties
16 may not dispute the amount of stipulated penalties due per type
17 of violation:

18 1. Monthly Progress Reports and Other Periodic Reports
19 a. Settling Work Defendant shall pay a stipulated
20 penalty of \$ 750 per day for the submission of a late or
21 deficient periodic progress report.

22 2. MCL Effluent Violations

23 a. At any time if the concentration of TCE in the
24 treated water is greater than 5.0 parts per billion ("ppb"),
25

26 ¹ EPA has deleted the qualification "Work" in this phrase
27 since it is not only the Settling Work Defendant that may incur
stipulated penalties under this Consent Decree.

1 Settling Work Defendant shall be considered to have been out of
2 compliance for each day for which the representative treated
3 water sample indicates that the concentration of TCE was greater
4 than 5.0 ppb. Settling Work Defendant shall be subject to
5 stipulated penalties in the amount of \$ 3,750 per day for each
6 such day of noncompliance.

7 b. At any time if the concentration of PCE in the
8 treated water is greater than 5.0 ppb, Settling Work Defendant
9 shall be considered to have been out of compliance for each day
10 for which the representative treated water sample indicates that
11 the concentration of PCE was greater than 5.0 ppb. Settling Work
12 Defendant shall be subject to stipulated penalties in the amount
13 of \$ 3,750 per day for each such day of noncompliance.

14 c. At any time if the concentration of a volatile
15 organic compound ("VOC") other than TCE or PCE in the treated
16 water is greater than the MCL in effect at that time for such
17 VOC, Settling Work Defendant shall be considered to have been out
18 of compliance for each day for which the representative treated
19 water sample indicates that the concentration of that VOC was
20 greater than the MCL in effect, provided that the MCL in effect
21 was promulgated on or before the Effective Date of this Consent
22 Decree. Settling Work Defendant shall be subject to stipulated
23 penalties in the amount of \$ 3,750 per day for each such day of
24 noncompliance.

25 d. At any time after the first sixty (60) days
26 after an analytical sample result shows that the concentration of
27 a contaminant in the treated water other than a VOC or nitrate is

greater than the MCL in effect at that time for such contaminant, Settling Work Defendant shall be considered to have been out of compliance for each day for which the representative treated water sample indicates that the concentration of that contaminant was greater than the MCL in effect, provided that the MCL in effect was promulgated on or before the Effective Date of this Consent Decree. Settling Work Defendant shall be subject to stipulated penalties in the amount of \$ 2,250 per day for each such day of noncompliance.

E. Class I Violations

Period of Noncompliance Penalty Per Day Per Violation

Days 1 - 5	\$ 750
Days 6 - 30	\$ 2,250
After 30 Days	\$ 3,750

1. Each failure to comply in a timely and adequate manner with the terms of this Consent Decree or any work plan implemented in whole or in part by this Consent Decree, that is not specifically listed as a violation elsewhere under this Section, and specifically including any failure to comply with the substantive standards of any applicable or relevant and appropriate requirement ("ARAR") identified in the ROD (as modified by the ESD and SOW) and not identified as a violation under Paragraphs E and G of this Section.

2. Failure ~~by Settling Work Defendant~~ to submit any of the following:

- i. Draft Second Stage Operations and Maintenance Work Plan

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- ii. Draft Second Stage Operations and Maintenance Staffing Plan
- iii. Draft Second Stage Operations and Maintenance Time Line and Schedule
- iv. Draft Quality Assurance Project Plan
- v. Draft Health and Safety Plan
- vi. Notification of Selection of O&M Contractors/ Subcontractors

3. Violation ~~by Settling Work Defendant~~ of ARARs, other than MCL violations, and South Coast Air Quality Management District Regulation XIII.

F. Class II Violations

Period of Noncompliance Penalty Per Day Per Violation

Days 1 - 5	\$ 1,500
Days 6 - 30	\$ 3,500
After 30 Days	\$ 10,000

Each violation ~~by Settling Work Defendant~~ of the following:

- i. Obligation to hold Final Inspection(s)
- ii. ARARs, other than MCL violations and South Coast Air Quality Management District Regulation XIII

Failure to submit any of the following:

- i. Second Stage Operations and Maintenance Work Plan
- ii. Second Stage Operations and Maintenance Staffing Plan
- iii. Second Stage Operations and Maintenance Time Line and Schedule
- iv. Second Stage Statement of Work

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1 v. Notification of Selection of O&M

2 Contractors/Subcontractors

3 vi. Quality Assurance Project Plan

4 vii. Health and Safety Plan

5 Failure by Settling Work Defendant to comply with any of the
6 following:

7 i. Quality Assurance Project Plan

8 ii. Health and Safety Plan

9 iii. Second Stage O&M Work Plan

10 If a Settling Defendant fails to pay stipulated penalties in
11 accordance with this Section, the United States may institute
12 proceedings in this action or a new action to collect the
13 penalties and any Interest due.

14 G. Payments of stipulated penalties shall be made by a
15 Settling Defendant as follows:

16 1. Stipulated penalties assessed for failure to make
17 full and timely payment to the O&M Trust Account pursuant to
18 Section XIV (Funding of Response Activities) or to the United
19 States or the State pursuant to Section XVII (Reimbursement of
20 Response Costs) shall be paid by Lockheed Martin.

21 2. Except for stipulated penalties which arise due to
22 Lockheed Martin's obligations under Section XIV (Funding of
23 Response Activities) or the UAO Parties' failure to comply with
24 their obligations under Paragraph M of Section XIV (Funding of
25 Response Activities), all other stipulated penalties assessed for
26 failure to comply with Section VI (Performance of the Work By
27 Settling Defendants) shall be the responsibility of and be paid

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1 by the City of Burbank. No such stipulated penalties may be paid
2 from the O&M Trust Account.

3 3. Stipulated penalties for failure by Lockheed Martin
4 to make full and timely payment or to meet other obligations
5 pursuant to Section XIV (Funding of Response Activities), except
6 for such penalties as may be incurred for failure to make full
7 and timely payment to paragraph M of that Section, shall be paid
8 by Lockheed Martin.

9 4. Stipulated penalties for failure to make full and
10 timely payment pursuant to Paragraph M of Section XIV (Funding of
11 Response Activities), Paragraph M of this Consent Decree shall be
12 paid by Lockheed Martin or the UAO Parties according to the EPA
13 Preliminary Finding and/or Further Determination required by that
14 Section and Paragraph.

15 H. Notwithstanding the stipulated penalties provided for
16 in this Section, and to the extent authorized by law, EPA may
17 elect to assess civil penalties or bring an action in District
18 Court to enforce the provisions of this Consent Decree. Payment
19 of stipulated penalties shall not preclude EPA from electing to
20 pursue any other remedy or sanction it may have to enforce this
21 Consent Decree, and nothing in this Decree shall preclude EPA
22 from seeking statutory penalties against a Settling Defendant who
23 violates statutory or regulatory requirements, except that the
24 total civil penalties (including stipulated penalties) collected
25 by EPA for any such violation shall not exceed \$ 25,000 per day
26 per violation.

27 I. A Settling Defendant may dispute any notice of

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1 deficiency issued to it. Penalties shall continue to accrue as
2 provided in this Section but need not be paid until the
3 following:

4 1. If the dispute is resolved by agreement or by
5 decision or order of EPA which is not appealed to this Court,
6 accrued penalties, plus interest at the rate specified in 28
7 U.S.C. § 1961, shall be paid to EPA within thirty (30) days of
8 the agreement or Settling Defendant's receipt of EPA's decision
9 or order;

10 2. If the Settling Defendant appeals EPA's decision
11 pursuant to Section XX (Dispute Resolution) and prevails upon
12 final resolution of the dispute, no stipulated penalties or
13 interest thereon will be payable and any assessment of stipulated
14 penalties and Interest thereon shall be set aside in writing by
15 EPA;

16 3. If the Settling Defendant appeals EPA's decision
17 pursuant to Section XX (Dispute Resolution) and does not prevail
18 upon final resolution of the dispute, all accrued stipulated
19 penalties, plus Interest shall be paid within thirty (30) days of
20 a final Court order.

21 4. If a Settling Defendant appeals EPA's decision to
22 this Court and the Court's decision is appealed by any Party, the
23 Settling Defendant shall pay all accrued penalties determined by
24 the District Court to be owing to the United States or the State
25 into an interest-bearing escrow account within sixty (60) days of
26 receipt of the Court's decision or order. Penalties determined
27 by the Court to be accruing shall be paid into this account as

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1 they continue to accrue, at least every sixty (60) days. Within
2 fifteen (15) days of receipt of the final appellate Court
3 decision, the escrow agent shall pay the balance of the account
4 to EPA and the State or to a Settling Defendants to the extent
5 that ~~they~~ ~~it~~ prevails.

6 J. In the event that EPA assumes performance of a portion
7 or all of the O&M Activities pursuant to Paragraph F of Section
8 XXII (Covenants Not to Sue by Plaintiffs), Settling Work
9 Defendant shall remain liable for any stipulated penalties that
10 have accrued or that may accrue under this Consent Decree. ~~To~~
11 ~~the extent EPA assumes some or all of the Work required to be~~
12 ~~performed by the Settling Work Defendant as to the Upstream~~
13 ~~Facilities, EPA shall be substituted for the Settling Work~~
14 ~~Defendant as the recipient of the Annual Budget.~~

15 K. All penalties owed to the United States and the State
16 under this section shall be due and payable within thirty (30)
17 days of the Settling Defendant's receipt from EPA of a demand for
18 payment of the penalties, unless the Settling Defendant invokes
19 the Dispute Resolution procedures under Section XX (Dispute
20 Resolution). All payments under this Section shall be
21 transmitted via EFT to the U.S. Department of Justice Lockbox,
22 and shall reference CERCLA Number SSID # L6, DOJ Case Number 90-
23 11-2-442 and USAO File NO. 91-03-463. Written verification of
24 EFTs pursuant to this Section shall be sent to the United States
25 as provided in Section XXVII (Notices and Submissions).

26 L. The payment of penalties shall not alter in any way the
27 Settling Work Defendant's obligation to complete the performance

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1 of the O&M Activities required under this Consent Decree.

2 M. If a Settling Defendant fails to pay stipulated
3 penalties when due, the United States or the State may institute
4 proceedings to collect the penalties, as well as ~~the~~ interest. The
5 Settling Defendant shall pay Interest on the unpaid balance,
6 which shall begin to accrue thirty (30) days after the date of
7 demand made pursuant to this Section, Paragraph L.

8 N. Nothing in this Consent Decree shall be construed as
9 prohibiting, altering, or in any way limiting the ability of the
10 United States or the State to seek any other remedies or
11 sanctions available by virtue of a Settling Defendant's violation
12 of this ~~Consent~~ Decree or of the statutes and regulations upon
13 which it is based, including, but not limited to, penalties
14 pursuant to Section 122(1) of CERCLA, 42 U.S.C. § 9622(1).

15 XXII. COVENANTS NOT TO SUE BY PLAINTIFFS

16 In consideration of the actions that will be performed and
17 the payments that will be made by the Settling Defendants under
18 the terms of the Consent Decree, and except as specifically
19 provided in Paragraphs B, C and E of this Section, the United
20 States and the State covenant not to sue or to take
21 administrative action against Settling Defendants, the Released
22 Parties, their respective officers, directors, employees and
23 agents, and where the Settling Defendant or Released Party is a
24 trust, its trustees appointed to carry out the purposes of the
25 trust, pursuant to Sections 106 and 107(a) of CERCLA and Section
26 7003 of RCRA, and the State covenants not to sue or to take
27 administrative action pursuant to Chapters 6.5, Sections 25100 et

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1 seq., and 6.8 Sections 25300 et seq. of the California Health and
2 Safety Code for ~~all Covered Matters expressly specified in~~
3 ~~Section XXIV (Effect of Settlement; Contribution Protection),~~
4 ~~Paragraph C. performance of the O&M Activities and for recovery~~
5 ~~of Past Site-Specific Response Costs, Future Site-Specific~~
6 ~~Response Costs, and Past Basin-wide Response Costs. As to each~~
7 ~~Settling Defendant,~~ these covenants not to sue are conditioned
8 upon the complete and satisfactory performance by ~~such~~ Settling
9 Defendants of ~~their~~ ~~its~~ then-current obligations under this
10 Consent Decree and shall remain in effect as to each Settling
11 Defendant until and unless such Settling Defendant is not in
12 compliance with the obligations imposed upon it by this Consent
13 Decree. These covenants not to sue extend only to each Settling
14 Defendant and ~~its subsidiaries, affiliates, and corporate or~~
15 ~~institutional predecessors and successors, the~~ ~~and related~~
16 Released Parties, ~~and their respective officers, directors,~~
17 ~~employees and agents, and where the Settling Defendant or~~
18 ~~Released Party is a trust, its trustees appointed to carry out~~
19 ~~the purposes of the trust.~~ These covenants not to sue do not
20 extend to any other person. No person otherwise liable
21 independent of liability associated with its status as a
22 corporate or institutional predecessor or successor to a Settling
23 Defendant shall benefit from this provision.

24 A. United States' Pre-certification Reservations.

25 Except as to the parties listed in Appendix 3, and
26 notwithstanding any other provision of this Consent Decree, the
27 United States reserves, and this Consent Decree is without

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1 prejudice to, the right to institute proceedings in this action
2 or in a new action, or to issue an administrative order seeking
3 to compel Settling Defendants or any of them (1) to perform
4 further response actions relating to the Site or (2) to reimburse
5 the United States for additional costs of response if, prior to
6 certification of completion of O&M Activities:

7 (i) conditions at the Site, previously unknown to EPA,
8 are discovered, or

9 (ii) information, previously unknown to EPA, is
10 received, in whole or in part,

11 and these previously unknown conditions or information together
12 with any other relevant information indicates that the Remedial
13 Action or the O&M Activities are not protective of human health
14 or the environment.

15 B. Except as to the parties listed in Appendix 3, the
16 United States also reserves the right to institute proceedings in
17 this action or in a new action, or to issue an administrative
18 order seeking to compel Settling Defendants or any of them to (1)
19 perform further response actions relating to the Site or (2) to
20 reimburse the United States for additional costs of response if,
21 prior to certification of completion of the O&M Activities, (1)
22 the Settling Work Defendant substantially fails and/or refuses to
23 perform the O&M Activities, or (2) a force majeure event causes
24 major damage (as defined in Section XIV (Funding of Response
25 Activities), Paragraph N) to the Plant Facilities.

26 C. United States' Post-certification Reservations. Except
27 as to the parties listed in Appendix 3, and notwithstanding any

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1 other provision of this Consent Decree, the United States
2 reserves, and this Consent Decree is without prejudice to, the
3 right to institute proceedings in this action or in a new action,
4 or to issue an administrative order seeking to compel Settling
5 Defendants or any of them (1) to perform further response actions
6 relating to the Site or (2) to reimburse the United States for
7 additional costs of response if, subsequent to certification of
8 completion of the O&M Activities:

9 (i) conditions at the Site, previously unknown to
10 EPA, are discovered, or

11 (ii) information, previously unknown to EPA, is
12 received, in whole or in part,

13 and these previously unknown conditions or this information
14 together with any other relevant information indicate that the
15 Remedial Action or the O&M Activities are not protective of human
16 health or the environment.

17 D. For purposes of Section XXII, Paragraph A, the
18 information and the conditions known to EPA shall include only
19 that information and those conditions set forth in the ROD for
20 the Site, the administrative record supporting the ROD, and
21 information required to be and actually submitted to EPA pursuant
22 to the First Consent Decree ~~or UAO 92-12~~ prior to the date of
23 lodging of this Consent Decree. For purposes of Section XXII,
24 Paragraph C, the information received by and the conditions known
25 to EPA shall include only that information and those conditions
26 set forth in the ROD, the administrative record supporting the
27 ROD, and any information received by or required to be and

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1 actually submitted to EPA pursuant to the requirements of the
2 First Consent Decree, this Consent Decree ~~or UAO 92-12~~ prior to
3 Certification of Completion of the O&M activities.

4 E. General Reservations of Rights. The covenants not to
5 sue set forth above do not pertain to any matters other than ~~the~~
6 ~~Covered Matters expressly specified in Section XXIV (Effect of~~
7 ~~Settlement; Contribution Protection), Paragraph C, those~~
8 ~~expressly specified in Section XXII, Paragraph A.~~ The United
9 States and the State reserve, and this Consent Decree is without
10 prejudice to, all rights against a Settling Defendant ~~or a~~
11 ~~Released Party~~ with respect to all other matters, including but
12 not limited to, the following:

13 (1) claims based on a failure by such Settling
14 Defendant to meet a requirement of this Consent Decree;

15 (2) liability arising from the past, present, or
16 future disposal, release, or threat of release of hazardous
17 substances outside of the Site;

18 (3) liability for damages for injury to, destruction
19 of, or loss of natural resources;

20 (4) liability for response costs that have been or may
21 be incurred by any Federal or State agency which is the
22 trustee for natural resources and which ~~has~~ ~~ve~~, or may in the
23 future, spend funds relating to the Site;

24 (5) criminal liability;

25 (6) liability for violations of Federal or State law
26 which occur during or after implementation of the Remedial
27 Action or O&M activities;

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1 (7) liability for additional response actions as may
2 be required pursuant to Section VII (Additional Response) or
3 VIII (Periodic Review) of this Decree, to the extent
4 Settling Defendants do not agree in this Consent Decree to
5 fund and/or perform such response actions under this ~~Consent~~
6 Decree;

7 (8) liability for additional operable units at the
8 Site, for other operable units outside the Site, or ~~the any~~
9 ~~interim or final Basin-wide~~ response action; and

10 (9) liability for Future Basin-wide ~~Response~~ Costs, and
11 any costs that the United States or the State will incur or
12 have incurred related to the Site which are not within the
13 definition of Past Site-Specific Response Costs, Future
14 Site-Specific Response Costs, ~~or~~ Past Basin-wide Response
15 Costs.

16 F. In the event EPA determines that Settling Work
17 Defendant has failed to implement any provisions of the O&M
18 Activities in an adequate or timely manner, EPA may perform any
19 and all portions of the O&M Activities as EPA determines
20 necessary. ~~In such event, Lockheed Martin shall fund EPA's~~
21 ~~performance of such O&M Activities pursuant to Section XIV~~
22 ~~(Funding of Response Activities), Paragraph H.2.b-c. Settling~~
23 ~~Work Defendant shall reimburse Lockheed Martin for that portion~~
24 ~~of EPA's costs incurred to fund EPA's takeover and/or performance~~
25 ~~of O&M Activities which is caused by the necessity for EPA to~~
26 ~~take over such O&M Activities from the Settling Work Defendant~~
27 ~~pursuant to this Section and Paragraph. If EPA takes over the~~

1 performance of some or all of the O&M Activities pursuant to this
2 Section and Paragraph, EPA shall issue a determination at the
3 request of Settling Work Defendant or Lockheed Martin concerning
4 which costs incurred by EPA were due to the necessity for EPA to
5 take over such O&M Activities from the Settling Work Defendant.
6 In no event shall the accounting of such costs for which the
7 Settling Work Defendant may be required to reimburse Lockheed
8 pursuant to this Paragraph continue for a period longer than one
9 year from EPA's takeover of such O&M Activities. Settling Work
10 Defendant or Lockheed Martin may invoke the procedures set forth
11 in Section XX (Dispute Resolution) to dispute EPA's determination
12 concerning such costs.

13 G. Settling Work Defendant may invoke the procedures set
14 forth in Section XX (Dispute Resolution) to dispute EPA's
15 determination that the Settling Work Defendant failed to
16 implement a provision of the O&M Activities in an adequate or
17 timely manner as arbitrary and capricious or otherwise not in
18 accordance with law. Such dispute shall be resolved on the
19 Administrative Record. ~~EPA shall be substituted as the recipient~~
20 ~~of funds provided in the O&M Trust Account for such activities,~~
21 ~~and additional costs, if any, incurred by the United States in~~
22 ~~performing the O&M Activities pursuant to this Paragraph shall be~~
23 ~~considered Future Site-Specific Response Costs that Lockheed~~
24 ~~Martin shall pay pursuant to Section XVII (Reimbursement of~~
25 ~~Response Costs).~~ Except as is necessary to address an imminent
26 and substantial endangerment to human health or the environment,
27 EPA shall provide Settling Work Defendant with ten (10) days

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1 written notice of its intent to perform a portion or all of the
2 O&M Activities. In the notice, EPA shall also describe the
3 alleged deficiency. If the Settling Work Defendant disagrees
4 with EPA's determination that it has failed to perform, in an
5 adequate and timely manner, the O&M Activities required to be
6 performed by this Consent Decree, and Settling Work Defendant
7 desires to dispute EPA's determination in this regard, Settling
8 Work Defendant shall invoke the dispute resolution provisions of
9 Section XX (Dispute Resolution) within thirty (30) days of
10 receiving written notice of EPA's intent. Invocation of dispute
11 resolution shall not divest EPA of its right to perform the O&M
12 Activities during the dispute. Upon receipt of notification that
13 EPA intends to take over the performance of a portion or all of
14 the O&M Activities, Settling Work Defendant's obligations to
15 perform such O&M Activities pursuant to this Consent Decree shall
16 terminate and stipulated penalties, if any are being incurred due
17 to Settling Work Defendant's failure to perform such O&M
18 Activities in a timely or adequate manner, shall cease to accrue
19 against Settling Work Defendant for such failure.

20 H. Notwithstanding any other provision of this Consent
21 Decree, the United States and the State retain all authority and
22 reserve all rights to take any and all response actions
23 authorized by law. However, the obligation, if any, of the
24 Settling Defendants to reimburse the United States for taking
25 such actions shall be governed by the provisions of this Consent
26 Decree to the extent Settling Defendants comply with their
27 obligations to fund or perform such response actions pursuant to
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1 this Consent Decree.

2 XXIII. COVENANTS BY SETTLING DEFENDANTS

3 A. Settling Defendants hereby covenant not to sue and agree
4 not to assert any claims or causes of action against the United
5 States with respect to the Site or this Consent Decree,
6 including, but not limited to, any direct or indirect claim for
7 reimbursement from the Hazardous Substance Superfund (established
8 pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through
9 CERCLA Sections 106(b)(2), 111, 112, 113, 42 U.S.C. §§
10 9606(b)(2), 9611, 9612, and 9613, or any other provision of law,
11 any claim against the United States, including any department,
12 agency or instrumentality of the United States under CERCLA
13 Sections 107 or 113, 42 U.S.C. §§ 9607 or 9613, related to the
14 Site except as expressly reserved in Paragraph XXIII (Covenants
15 By Settling Defendants), Paragraphs (A)(1), (2), or (3) of this
16 Consent Decree or Section XVII, Paragraph B of the First Consent
17 Decree, or any claims arising out of response activities at the
18 Site. However, the Settling Defendants reserve, this Consent
19 Decree is without prejudice to, and nothing in this Consent
20 Decree shall be interpreted as waiving, abrogating or resolving:

21 (1) any claims which any Settling Defendant has or may
22 have based upon any alleged liability which the United States
23 Department of Defense, any branch or division thereof ("DOD"), or
24 any predecessor agency to DOD for conditions at the Site pursuant
25 to CERCLA Sections 106, 107, 113, 120 or 310, 42 U.S.C. §§ 9606,
26 9607, 9613, 9620 or 9659 or RCRA Section 7002, 42 U.S.C. § 6972;

27 (2) any claims which any Settling Defendant has or may

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1 have with respect to the Site against the United States pursuant
2 to any contract between any Settling Defendant and the United
3 States or between any Settling Defendant and any government
4 contractor(s) related to the Site; or

5 (3) actions against the United States based on
6 negligent actions taken directly by the United States (not
7 including oversight or approval of the Settling Defendants' plans
8 or activities) that are brought pursuant to any statute other
9 than CERCLA and for which the waiver of sovereign immunity is
10 found in a statute other than CERCLA.

11 (4) actions ~~against the State taken directly by the~~
12 ~~State~~-based on negligent actions taken directly by the State (not
13 including oversight or approval of the Settling Defendants' plans
14 or activities) that are brought pursuant to any statute or law
15 other than CERCLA, RCRA, and Chapters 6.5, Sections 25100 et
16 seq., and 6.8, Sections 25300 et seq. of the California Health &
17 Safety Code.

18 B. In agreeing to ~~thisese~~ reservations, the United States
19 ~~and the State does~~ not admit liability on any such claims and
20 expressly reserves any and all defenses that ~~iteither of them~~ may
21 have to any such claims.

22 C. Except as expressly set forth in this Consent Decree,
23 Settling Defendants do not waive any claim against and do not
24 release or covenant not to sue the United States ~~or the State~~
25 with respect to any matter. Nothing in this Consent Decree shall
26 be deemed to constitute preauthorization of a claim within the
27 meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R.

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1 § 300.700(d).

2 D. Settling Defendants hereby covenant not to sue and agree
3 not to assert any claims or causes of action against the State
4 with respect to the Site or this Consent Decree, including, but
5 not limited to, (1) any direct or indirect claim for
6 reimbursement from the Hazardous Waste Control Account, Hazardous
7 Substance Account, or Hazardous Substance Cleanup Fund through
8 Health and Safety Code section 25375 or any other provision of
9 law; (2) any claim against the State under Sections 107 or 113 of
10 CERCLA, 42 U.S.C. §§ 9607 or 9613, or Section 7003 of RCRA, 42
11 U.S.C. § 9673; (3) any other claims arising out of Settling
12 Defendants' response activities at the Site, including but not
13 limited to nuisance, trespass, taking equitable indemnity and
14 indemnity under California law, contribution under California and
15 Federal law, or strict liability under California law.

16 XXIV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

17 A. Nothing in this Consent Decree shall be construed to
18 create any rights in, or grant any cause of action to, any person
19 not a party to or a Released Party under this Consent Decree.
20 The preceding sentence shall not be construed to waive or nullify
21 any rights that any person not a signatory to this Consent Decree
22 may have under applicable law. Each of the parties expressly
23 reserves any and all rights (including, but not limited to, any
24 right to contribution), defenses, claims, demands, and causes of
25 action which each party may have with respect to any matter,
26 transaction, or occurrence relating in any way to the Site
27 against any person not a party or Released Party hereto.

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1 B. At such time as a judgment is entered and becomes final
2 judicially approving this Consent Decree, each Settling Defendant
3 hereby expressly waives any and all rights (including, but not
4 limited to, any right to contribution, defenses, claims, demands,
5 and causes of action under State or Federal law against all
6 other Settling Defendants with respect to Covered Matters
7 ~~specified in Section XXIV (Effect of Settlement; Contribution~~
8 ~~Protection)~~; Paragraph C. With regard to claims by third parties
9 for contribution against Settling Defendants ~~and/or Released~~
10 ~~Parties for such Covered Matters, matters addressed in this~~
11 ~~Consent Decree,~~ the parties hereto agree that the Settling
12 Defendants ~~and Released Parties~~ are entitled to such protection
13 from contribution actions or claims as is provided by CERCLA
14 Section 113(f)(2), 42 U.S.C. § 9613(f)(2).

15 C. The Covered Matters in this Consent Decree are:

- 16 1. EPA's and the State's Past Site-Specific Response
17 Costs and Past Basin-wide Response Costs,
- 18 2. EPA's and the State's Future Site-Specific Response
19 ~~Costs for the Site,~~
- 20 3. all matters addressed in the First Consent Decree
21 ~~and this Consent Decree,~~
- 22 ~~4. all matters addressed in~~ UAO 92-12 through the
23 period covered during this Consent Decree,
- 24 5. all costs of implementing the O&M Activities and
25 any other response activity to be performed under this Consent
26 Decree, except to the extent this Consent Decree does not provide
27 for one or more of the Settling Defendants to fund and/or to

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1 perform any part of such activities.

2 D. The Settling Defendants agree that with respect to any
3 suit or claim for contribution brought by them for matters
4 related to this Consent Decree they will notify the United States
5 and the State in writing no later than sixty (60) days prior to
6 the initiation of such suit or claim.

7 E. The Settling Defendants also agree that with respect to
8 any suit or claim for contribution brought against them for
9 matters related to this Consent Decree they will notify in
10 writing the United States and the State within sixty (60) days of
11 service of the complaint on them. In addition, Settling
12 Defendants shall notify the United States and the State within
13 ten (10) days of service or receipt of any Motion for Summary
14 Judgment and within ten (10) days of receipt of any order from a
15 court setting a case for trial.

16 F. In any subsequent administrative or judicial proceeding
17 initiated by the United States or the State for injunctive
18 relief, recovery of response costs, or other appropriate relief
19 relating to the Site, Settling Defendants shall not assert, and
20 may not maintain, any defense or claim based upon the principles
21 of waiver, res judicata, collateral estoppel, issue preclusion,
22 claim-splitting, or other defenses based upon any contention that
23 the claims raised by the United States or the State in the
24 subsequent proceeding were or should have been brought in the
25 instant case; provided, however, that nothing in this Paragraph
26 affects the enforceability of the covenants not to sue set forth
27 in Section XXIII (Covenants Not to Sue by Plaintiffs).

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1 G. Payment of all sums ~~which~~ a Settling Cash Defendant is
2 obligated to pay, pursuant to Sections XIV (Funding of Response
3 Activities) and XVII (Reimbursement of Response Costs) of this
4 Consent Decree, comprises full settlement for all ~~Covered Matters~~
5 ~~addressed in the First Consent Decree and UAO 92-12. Thus, with~~
6 ~~regard to claims for contribution against Settling Defendants~~
7 ~~for matters addressed in the First Consent Decree and UAO 92-12,~~
8 ~~the Parties hereto agree that the and thus, such Settling Cash~~
9 ~~Defendants and related Released Parties~~ are entitled to such
10 protection from contribution actions or claims as is provided by
11 CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2).

12 XXV. ACCESS TO INFORMATION

13 A. Settling Defendants shall provide to EPA and the State,
14 upon request, copies of all non-privileged documents and
15 information within their possession or control or that of their
16 contractors or agents relating to response actions at the Site or
17 to the implementation of this Consent Decree including, but not
18 limited to, sampling, analysis, chain of custody records,
19 manifests, trucking logs, receipts, reports, sample traffic
20 routing, correspondence, or other documents or information
21 related to the O&M Activities. Settling Defendants shall also
22 make available to EPA and the State, for purposes of
23 investigation or information gathering, their employees, agents,
24 or representatives with knowledge of relevant facts concerning
25 the performance of the O&M Activities.

26 B. Settling Defendants may assert confidentiality claims
27 covering part or all of the documents or information submitted to

1 Plaintiffs under this Consent Decree to the extent permitted by
2 and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C.
3 § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information
4 determined to be confidential by EPA will be afforded the
5 protection specified in 40 C.F.R. Part 2, Subpart B. If no claim
6 of confidentiality accompanies documents or information when they
7 are submitted to EPA and the State, or if EPA has notified
8 Settling Defendants that the documents or information are not
9 confidential under the standards of Section 104(e)(7) of CERCLA,
10 the public may be given access to such documents or information
11 without further notice to Settling Defendants.

12 C. The Settling Defendants may assert that certain
13 documents, records and other information are privileged under the
14 attorney-client privilege or any other privilege recognized by
15 law. In the case of documents, if a Settling Defendant asserts
16 such a privilege in lieu of providing documents, it shall provide
17 the Plaintiffs with the following: (1) the title of the
18 document, record, or information; (2) the date of the document,
19 record, or information; (3) the name and title of the author of
20 the document, record, or information; (4) the name and title of
21 each addressee and recipient; (5) a description of the contents
22 of the document, record, or information: and (6) the privilege
23 asserted by such Settling Defendant. However, no documents,
24 reports or other information created or generated pursuant to the
25 requirements of the Consent Decree shall be withheld on the
26 grounds that they are privileged. If a claim of privilege
27 applies only to a portion of a document, the document shall be

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provided to EPA in redacted form.

D. No claim of confidentiality on privilege shall be made with respect to any document that falls within Section 104(e)(7)(F) of CERCLA, 42 U.S.C. § 9604(e)(7)(F).

XXVI. RETENTION OF RECORDS

A. Until ten (10) years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph B.2 of Section XV (Certification of Completion of the Work), each Settling Defendant shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the O&M Activities or liability of any person for response actions conducted and to be conducted at the Site, regardless of any document retention policy to the contrary. Until ten (10) years after Settling Defendants' receipt of EPA's notification pursuant to Paragraph A.2 of Section XV (Certification of Completion), Settling Defendants shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the O&M Activities.

B. At the conclusion of this document retention period, Settling Defendants shall notify the United States and the State at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by the United States or the State such Settling Defendant shall deliver any such records or documents to EPA or the State. A Settling Defendant may assert that certain documents, records and other information are

1 privileged under the attorney-client privilege or any other
2 privilege recognized by law. In the case of documents, if a
3 Settling Defendant asserts such a privilege, it shall provide the
4 Plaintiffs with the following: (1) the title of the document,
5 record, or information; (2) the date of the document, record, or
6 information; (3) the name and title of the author of the
7 document, record, or information; (4) the name and title of each
8 addressee and recipient; (5) a description of the subject of the
9 document, record, or information: and (6) the privilege asserted
10 by the Settling Defendant. However, no documents, reports or
11 other information created or generated pursuant to the
12 requirements of this Consent Decree shall be withheld on the
13 grounds that they are privileged. If a claim of privilege
14 applies only to a portion of the document, it shall be provided
15 to EPA in redacted form.

16 C. Each Settling Defendant hereby certifies, individually,
17 that it has not willfully and for an improper purpose altered,
18 mutilated, discarded, destroyed or otherwise disposed of any
19 records, documents or other information relating to its potential
20 liability regarding the Site since notification of potential
21 liability by the United States or the State or the filing of suit
22 against it regarding the Site and that to the best of its
23 knowledge, that it has fully complied with any and all EPA
24 requests for information pursuant to Section 104(e) and 122(e) of
25 CERCLA, 42 U.S.C. § 9604(e) and 9622(e), and Section 3007 of
26 RCRA, 42 U.S.C. § 6927.

27
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XXVII. NOTICES AND SUBMISSIONS

A. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, the State, and the Settling Defendants, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Re: DJ # 90-11-2-442

and

Director, Waste Management Division
United States Environmental Protection Agency
Region IX
75 Hawthorne St.
San Francisco, CA 94105

As to EPA:

EPA Project Coordinator, San Fernando Valley
Burbank Operable Unit
United States Environmental Protection Agency
Region IX
75 Hawthorne Street, H-6-4

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San Francisco, CA 94105

As to the State:

Hamid Saebfar, Chief
Site Mitigation Cleanup Operations
Department of Toxic Substances Control
Southern California Branch
1011 N. Grandview Avenue
Glendale, CA 91201

As to the Settling Work Defendant:

[Name]
Settling Work Defendant's Project Coordinator
[Address]

As to the Settling Defendants Other Than Settling Work Defendant:

As set forth in Appendix 7.

XXVIII. EFFECTIVE DATE

A. The Effective Date of this Consent Decree shall be the date upon which it is entered by the Court, except as otherwise provided herein.

XXIX. RETENTION OF JURISDICTION

A. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Settling Defendants for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XX (Dispute Resolution) hereof.

XXX. APPENDICES

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1 A. The following appendices are attached to and
2 incorporated into this Consent Decree:

3 Appendix 1 is the complete list of the Settling Cash
4 Defendants ~~and related Released Parties.~~

5 Appendix 2 is the complete list of the Owner Settling
6 Defendants.

7 Appendix 3 is the complete list of ~~the non-Owner Settling~~
8 Defendants ~~who are excepted from the operation of Section XX~~
9 ~~(Covenants not to Sue by Plaintiffs), Paragraphs A, B and C.~~

10 Appendix 4 is the Second Stage Statement of Work.

11 Appendix 5 is ESD 2.

12 Appendix 6 is the complete list of Settling Cash Defendants
13 and the amounts paid to Lockheed Martin in the action Lockheed
14 Corporation v. Crane Company et al. United States District Court,
15 Central District of California, Case No. 94-2717 MRP(Tx).

16 Appendix 6 is herewith submitted under seal.

17 ~~Appendix 7 is a list of the Settling Defendants and for each~~
18 ~~Settling Defendant, the person to whom notices and submissions~~
19 ~~shall be sent pursuant to Section XXVII (Notices and Submissions)~~
20 ~~of this Consent Decree. a list of certain Settling Defendants~~
21 ~~excepted from the operation of Section XX (Covenants Not to Sue~~
22 ~~by Plaintiffs), Paragraphs A, B and C.~~

23 The following exhibits are attached to this Consent Decree
24 for reference purposes and are not incorporated herein unless
25 otherwise noted.

26 Exhibit 1 is the First Consent Decree.

27 "Appendix A" to the First Consent Decree is the ROD.

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"Appendix B" to the First Consent Decree is ESD 1.

"Appendix C" to the First Consent Decree is the Map of Corrected Well Locations.

"Appendix D" to the First Consent Decree is the SOW.

"Appendix E" to the First Consent Decree is Schematics.

"Appendix F" to the First Consent Decree is a Plot Map.

Exhibit 2 is Unilateral Administrative Order 92-12 and the April 26, 1992 Amendment to Unilateral Administrative Order 92-12.

Exhibit 3 is a Memorandum of Agreement among the Settling Defendants concerning insurance coverage for the Upstream Facilities and Blending Facility.

XXXI. COMMUNITY RELATIONS

A. Settling Work Defendant shall ~~propose-participate and cooperate with to~~ EPA and the State ~~concerning~~ its participation in the community relations plan ~~("Plan") for the Site~~ to be developed or which has been previously developed by EPA. In consultation with Settling Work Defendant, EPA will determine the appropriate role for the Settling Work Defendant under the Plan. Settling Work Defendant shall cooperate with EPA and the State in implementing the ~~Community Relations Plan~~ and pursuant thereto, in providing information regarding the O&M Activities to the public. As requested by EPA, or the State, Settling Work Defendant, Lockheed Martin, and/or the Settling Cash Defendants (including the UAO Parties) shall participate in the preparation of information for dissemination to the public and in public meetings which may be held or sponsored by EPA or the State to

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1 explain activities at or relating to the Site.

2 XXXII. MODIFICATION

3 A. Schedules specified in this Consent Decree, in the
4 Second Stage Statement of Work, or in any work plan approved by
5 EPA pursuant to this Consent Decree for completion of the O&M
6 Activities or any other response activities may be modified by
7 agreement of EPA and the Settling Work Defendant, ~~and any other~~
8 ~~Settling Defendant whose rights and/or obligations would be~~
9 ~~substantially affected thereby.~~ All such modifications shall be
10 made in writing.

11 B. No modifications shall be made to the ~~Second Stage~~
12 ~~Statement of Work~~ without written notification to ~~and consent by~~
13 ~~any Settling Defendant whose rights or obligations would be~~
14 ~~substantially affected thereby,~~ and written approval of the
15 United States. ~~and Settling Work Defendant.~~ Prior to providing
16 its approval to any modification, the United States will provide
17 the State with a reasonable opportunity to review and comment on
18 the proposed modification.

19 C. Nothing in this ~~Consent~~ Decree shall be deemed to alter
20 EPA's authority to make changes to the interim remedy for the
21 Burbank Operable Unit in compliance with CERCLA, the National
22 Contingency Plan, and any other applicable laws or regulations,
23 or to require court approval of such changes.

24 D. Nothing in this ~~Consent~~ Decree shall be deemed to alter
25 the Court's power to enforce, supervise or approve modifications
26 to this Consent Decree.

1 XXXIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

2 A. This Consent Decree shall be lodged with the Court for a
3 period of not less than thirty (30) days for public notice and
4 comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C.
5 § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves
6 the right to withdraw or withhold its consent or suggest
7 modifications to this Decree if the comments regarding the
8 Consent Decree disclose facts or considerations which indicate
9 that the Consent Decree is inappropriate, improper, or
10 inadequate. Settling Defendants consent to the entry of this
11 Consent Decree without further notice. However, Settling
12 Defendants' consent to the entry of this Consent Decree is not
13 consent to any modifications, and no Settling Defendant shall be
14 bound by modifications to this Decree without its prior written
15 consent.

16 B. If for any reason the Court should decline to approve
17 this Consent Decree in the form presented, this agreement is
18 voidable as to any party at the sole discretion of such party and
19 the terms of the agreement may not be used as evidence in any
20 litigation between the Parties.

21 XXXIV. SIGNATORIES/SERVICE

22 A. Each undersigned representative of a Settling Defendant
23 to this Consent Decree and the Assistant Attorney General for
24 Environment and Natural Resources of the Department of Justice
25 certifies that he or she is fully authorized to enter into the
26 terms and conditions of this Consent Decree and to execute and
27 legally bind such party to this document.

28 AUGUST 5, 1996
BURBANK OPERABLE UNIT DRAFT CONSENT DECREE

1 B. Each Settling Defendant hereby agrees not to oppose
2 entry of this Consent Decree by this Court or to challenge any
3 provision of this Consent Decree unless the United States has
4 notified the Settling Defendants in writing that it no longer
5 supports entry of the Consent Decree.

6 C. Each Settling Defendant shall identify, on the attached
7 signature page, the name, address and telephone number of an
8 agent who is authorized to accept service of process by mail on
9 behalf of that party with respect to all matters arising under or
10 relating to this Consent Decree. Settling Defendants hereby
11 agree to accept service in that manner and to waive the formal
12 service requirements set forth in Rule 4 of the Federal Rules of
13 Civil Procedure and any applicable local rules of this Court,
14 including, but not limited to, service of a summons.

15
16 SO ORDERED THIS _____ DAY OF _____, 19__.

17
18
19 _____
United States District Judge

20
21
22
23
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25
26
27
28 AUGUST 5, 1996
BURBANK OPERABLE UNIT DRAFT CONSENT DECREE

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the
2 matter of United States v. Lockheed Martin Corporation, et al.,
3 relating to the San Fernando Valley North Hollywood, Area 1,
4 Burbank Operable Unit Superfund Site.

5 FOR THE UNITED STATES OF AMERICA

6 Date: _____

7 _____
8 Lois Schiffer
9 Assistant Attorney General
10 Environment and Natural Resources
11 Division
12 U.S. Department of Justice
13 Washington, D.C. 20530

14 _____
15 William Weinischke
16 Environmental Enforcement Section
17 Environment and Natural Resources
18 Division
19 U.S. Department of Justice
20 Washington, D.C. 20530

21 _____
22 Kurt Zimmerman
23 Assistant United States Attorney
24 Central District of California
25 U.S. Department of Justice
26 Federal Building
27 300 North Los Angeles Street
28 Los Angeles, CA 90012

29 _____
30 [Name]
31 Assistant Administrator for
32 Enforcement
33 U.S. Environmental Protection
34 Agency
35 401 M Street, S.W.
36 Washington, D.C. 20460

37
38 AUGUST 5, 1996
39 BURBANK OPERABLE UNIT DRAFT CONSENT DECREE

1
2 [Name]
3 Office of Enforcement
4 U.S. Environmental Protection
5 Agency
6 401 M Street, S.W.
7 Washington, D.C. 20460

8 Felicia Marcus
9 Regional Administrator, Region IX
10 U.S. Environmental Protection
11 Agency
12 75 Hawthorne Street
13 San Francisco, CA 94105

14 Marie M. Rongone
15 Assistant Regional Counsel
16 U.S. Environmental Protection
17 Agency
18 Region IX
19 75 Hawthorne Street
20 San Francisco, CA 94105

Consent Decree Signature Page
United States v. Lockheed Martin et al.

FOR THE STATE OF CALIFORNIA

Date: _____

Hamid Saebfar
Chief, Site Mitigation Cleanup
Operations
Department of Toxic Substances
Control
Southern California Branch

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the
2 matter of United States v. Lockheed Martin, et al., relating
3 to the San Fernando Valley, Area 1 (North Hollywood) Superfund
4 Site, Burbank Operable Unit.
5

6 FOR _____ COMPANY, INC. */
7

8 Date: _____
9

[Name -- Please Type]

[Title -- Please Type]

[Address -- Please Type]

10
11
12 Agent Authorized to Accept Service on Behalf of Above-signed
13 Party:

14 Name: _____ [Please Type]

15 Title: _____

16 Address: _____

17 Tel. Number: _____
18
19
20
21
22
23

24 */ A separate signature page must be signed by each
25 corporation, individual or other legal entity that is
26 settling with the United States.
27
28